

Human Rights Violations against the Transgender Community

Study of Kothi and Hijra Sex Workers in Bangalore, India - September 2003



Report by
People's Union for Civil
Liberties, Karnataka
(PUCL-K)

Foreword by
Upendra Baxi

M. S. Narayana

Community Health Cell
Library and Information Centre

367, " Srinivasa Nilaya "

Jakkasandra 1st Main,

1st Block, Koramangala,

BANGALORE - 560 034.

Phone : 5531518 / 5525372

e-mail:sochara@vsnl.com

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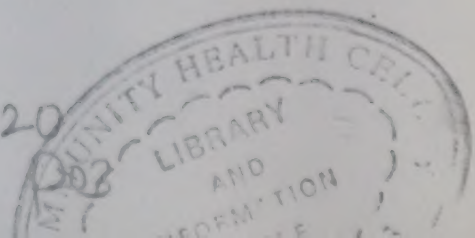


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Foreword

This poignant expose of human, and human rights, violations against transgender persons and communities should be compulsory reading for Indian human rights communities. The dominant discourse on human rights in India has yet to come to terms with the production/ reproduction of absolute human rightlessness of transgender communities. The work in your hands not merely foregrounds the microfascism of the local police state, it also archives practices of everyday resistance to it and a *programschrift* for a more inclusive formation of human rights movement in India.

At stake is the human right to be different, the right to recognition of different pathways of sexuality, a right to immunity from the oppressive and repressive labelling of despised sexuality. Such a human right does not yet exist in India; this work summons activist energies first towards its fully-fledged normative enunciation and second towards its attainment, enjoyment, and realisation. Always a formidable enterprise, it remains even more so in the contemporary regime-sponsored xenophobic militant Hindutva 'culture'.

This monograph highlights the distinctions between nascent lesbigay and transgender movements. The right to sexual orientation and conduct aims itself in the former domain at liberation from heterosexist and homophobic politics of cultural denial of equal worth of all human beings. It affirms lesbigay right to difference constituting a new frontier of 'universal' human rights. Transgender communities extend this contestation even further. They crystallize queer theory and its politics.

The difference is crucial. Lesbigay struggles pursue affirmative remedies; queer politics, in contrast, seeks transformative ones. Nancy Fraser felicitously articulates (in her *Justice Interrptus*, 1997:24) the contrast thus:

Affirmative remedies for homophobia and heterosexism are currently associated with gay-identity politics, which aims to revalue gay and lesbian identity. Transformative remedies, in contrast, are associated with queer politics,

The dominant discourse on human rights in India has yet to come to terms with the production/ reproduction of absolute human rightlessness of transgender communities.

which would deconstruct the homo-hetero dichotomy... so as to destabilize all fixed sexual identities. The point is not to dissolve all sexual differences in a single, universal human identity; it is, rather, to sustain a sexual field of multiple, debinarized, fluid, ever-shifting differences.

The remarkable 'testimonies' of hijras and kothis assembled in this monograph bring alive this insight in the contexts of 'unthinkable violence' (p.24) mirrored by police atrocities but reflecting its 'roots in deeper social structures' (p. 39). The point, however, about all unthinkable violence is that precisely its un-thinkability remains ceaselessly thought.

The monograph in its mapping of structural violence, the standardless use of force by state and civil society actors and agencies, and of the images of emancipatory struggles, remains ambivalent concerning 'the' law. How especially the narratives of 'mobilization process' against perpetual humiliation and violence against these communities (pp.60-67) may relate to respect for gay rights as human rights in terms of implementation and renovation of the Indian Constitution and the law (pp.68-78) is a question continually posed here. If the law is the crooked mirror of perverse social domination, its smashing, the 'trashing' of the law, is at best an idle pastime. However, if the law is also a constitutive condition of production/reproduction of despised sexuality, it offers among the first sites of struggle against cultural and political domination. On this site, the struggle necessarily assumes the form of rights-talk. It entails juridicalization of identity movements. If it promises and even delivers identity rights first in the shape of rights of discrete and insular minorities and second as an instance of the human right to equality, and non-discrimination, rights-talk also amounts to externalization, as it were, of movements for politics of recognition often subversive of inner solidarities. The rights discourse serves thus, and simultaneously, the logics of regulation as well as emancipation¹.

The principal message of this monograph goes beyond the eminently desirable and feasible programs of effective legal action. The struggle assuredly goes beyond (to evoke a happy phrase of Santos) the glacial time of law reform. Legal and juristic triggers furnish merely fungible initial (even if at times inaugural) strategies in a combat against millennia-based human, and human rights, violation. The monograph suggests a broader coalition of strategies against the myriad modes of 'gratuitous violence' (p.39) against transgender communities' located on the axis of cultural taboos against 'transgressive sexuality/ gender' articulation and the political economy, as it were, of despised sexualities. It

accentuates the precious, but always precarious, nexus between human rights and social movements.

Put another way, at stake is the absent figure of the transsexual as a servitor of the distinctively cultural, economic, and political hegemonic basic needs. The narratives assembled here silhouette the histories of these hegemonic 'needs'.

This precious monograph addresses the mission of human rights as contesting discrimination in its most profound sense as a source and a seat of continual mode of production of the distinctively recalcitrant form of Indian human rightlessness.

Sangama thus represents, through its present and future struggles, the best hope there is for a renaissance of human right to difference. I remain deeply indebted to its magnificent initiative and in particular to Arvind Narrain for educating me in the possible alternative futures of human rights.

Upendra Baxi
University of Warwick
30 July 2003

¹ See Bouaventura de Sousa Santos, *Toward a New Legal Commonsense* (2002: London, Butterworths); Upendra Baxi, *The Future of Human Rights* (2002: Delhi, Oxford University Press)

Acknowledgements

This report is the result of the work of many people. We would like to thank Prof. Upendra Baxi for having been most encouraging in our efforts to push the rights of queer people within human rights frameworks and the human rights community. We greatly appreciate the Foreword, which he has so generously written to this report. We would also like to thank:

The hijras and kothis who unstintingly shared their life stories with strangers in the hope that the Report would make some difference in their lives.

Sangama for having made available their documentation, resources as well as their feedback and comments on drafts of the Report.

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We would welcome any feedback and comments on the Report. Do get in touch with Ramdas Rao (ramdas_rao@hotmail.com) or Arvind Narrain (anarrain@yahoo.co.in) for any feedback or comments.

Arvind Narrain (*ALF*)

Shakun (*Vimochana*)

Muddappa (*DISC*)

Babaiah and Sreedhara (*PDF*)

Famila (*Sangama*)

Ramdas Rao (*PUCL-K*)

(Members of the *PUCL-K* team)

1.1 Summary

This report, through a collection of personal narratives, attempts to provide an understanding of the life of the transgender community in Bangalore, viz., hijras and kothis. Along with the cultural and social contexts that inform the limited choices, for example, of sex work and begging, this report also analyses the current legal framework and its pre-occupation with regulating the movements of hijras and kothis. It demonstrates the stark realities of harassment, abuse and sexual violence that form a part of the day-to-day existence of hijras and kothis in Bangalore. It describes the variety of ways in which the process of organizing by hijra and kothi sex workers is taking place.

The report shows that mainstream society's deep-rooted fear of sexual and gender non-conformity manifests itself in the refusal of basic citizenship rights to these communities. The report ends with a charter of 'action points' for human rights groups and the sexuality minority movement in order to take these issues further, the goal being a realization of the rights of citizenship and personhood of hijras and kothis.

1.2 Need and purpose of this report

In 2002, four kothi sex workers, Seeta, Sheela, Vimla, and Malathi were picked up from the streets by the police and taken to Sampangiramanagara police station in Bangalore. In the police station, they were harassed and severely beaten up, resulting in injuries on their hands, arms, and feet. They were later released, without any charges, but with a warning that they should not be seen on the streets of Bangalore again.

In a state of considerable physical pain and mental anguish, and despite feeling insecure about appearing in public, they approached *Sangama*, a sexuality minority rights organisation, with this complaint. The police had been threatening them on a regular basis in an attempt to 'cleanse' the streets of hijra and kothi sex workers even when they are not trying to solicit clients, which is a crime under Sec 8(b) of the *Immoral Traffic Prevention Act* (1986).

...in recent months, there have been an increasing number of incidents in Bangalore involving repeated harassment and physical abuse of kothi and hijra sex workers at the hands of the police.

This is not just one isolated incident. In recent months, there have been an increasing number of similar incidents in Bangalore involving repeated harassment and physical abuse of kothi and hijra sex workers at the hands of the police, and sometimes, of society itself. However so far all the verbal and anecdotal evidence has remained undocumented.

Documentation of human rights violations forms the very basis of any human rights movement. It substantiates allegations of harassment, abuse and discrimination through an illustration of ground realities. The brutal stories of abuse and sexual violence documented in this report are really narratives of cruel and traumatic experiences of a community which negates the constitutional claim of equal citizenship and protection for all.

As a deliberation on human rights, this report cannot limit itself only to documenting human rights violations and narratives of abuse. The lives of hijra and kothi have traditionally been ignored due to their perceived 'low status' as well as their lack of organisation. It is important that we understand the reasons. To what extent are the attitudes towards hijras linked to their unique sexuality and gender identity? How do the overlapping factors of class, caste, and sexuality maintain hijras and kothis in the bottom of the social hierarchy?

The initiative of the four kothis who came to *Sangama* with this complaint also indicates the beginning of a grassroots movement. Through public protests, street protests, and interventions in times of crisis, there has been an emerging movement towards a different and more public (i.e., political) identity in hijra and the kothi communities in Bangalore. This report attempts to document this journey of resilience, active resistance, and emerging politicisation in the face of oppression by the state, family, society and law.

The movement for sexuality minorities in India, even in its second decade, has confined itself to advocating the rights of only gay, lesbian, and bisexual people. The reluctance of the gay, lesbian and bisexual movement to take on board the concerns of transgender people and others who don't identify as lesbian, gay, or bisexuals arguably flows from the larger mainstream discrimination meted out to the hijra community in India due to their non-conformist gender identity and class marginalisation. This reluctance is now being questioned by the increasing demand of the hijra and kothi communities to be considered an integral part of the sexuality minority movement. This is reflective of a global shift in the discourse of queer politics from issues of sexual orientation to issues of gender identity.

Due to the increasing awareness around issues of marginal sexuality generated in Bangalore by the work of various groups and organizations as well as the rising global awareness around issues of HIV/AIDS and human rights, the concerns of these communities are today being widely articulated. Besides, many hijras are getting educated and moving into non-traditional occupations such as social work, politics etc. While this has brought them visibility, their continuing stigmatisation keeps them at the fringes of society, subject to formidable problems of oppression, humiliation, discrimination and violence. In fact, as this report points out, the increasing mobilisation of the kothi and hijra sex worker community often results in a severe backlash from the police and other sections of society.

We hope that this report, with its strength of evidence and testimonies, creates awareness, visibility and advocacy around the rights of sexuality minorities, specifically for the rights of hijras and kothis, and sexuality minorities in general.

1.3 Methodology

In response to the complaint mentioned above about recurring and pervasive police violence against kothi and hijra sex workers in Bangalore, *Peoples' Union for Civil Liberties, Karnataka (PUCL-K)* along with other human rights organisations such as *Alternative Law Forum (ALF)*, *Development Initiative for Social Causes (DISC)*, *Peoples' Democratic Forum (PDF)*, *Sangama* and *Vimochana*, decided to institute a joint fact-finding to go into such human rights violations, and suggest measures for redressal of grievances and securing justice. (It may be noted here that women in sex work are also equally susceptible to indiscriminate hostility from the police; for this, a parallel inquiry will be conducted shortly.)

A team was formed by *PUCL-K* consisting of Arvind Narrain (*ALF*), Shakun (*Vimochana*), Muddappa (*DISC*), N. Babaiah and V.S. Sreedhara (*both of PDF*), Famila (*Sangama*) and Ramdas Rao (*PUCL-K*), to conduct a fact-finding inquiry and prepare a report, and coordinate a follow-up campaign. On 17 March 2002 the team met about thirty kothi and hijra sex workers to come and relate their experiences. This was followed by a series of meetings with hijras and kothis in *Sangama* and at *Vividha*. Some members of *Vividha* also gave written accounts of their experiences which also form a part of this report.

The crux of Chapter III on 'Violence and abuse: Testimonies of kothi and hijra sex workers' was based on the documentation done by the *Sangama* team. This documentation effort which in a sense forms the heart of the report was

arrived at through a process which included everyone from victims to field workers sitting together and writing down their experiences. Sometimes testimonies were recorded in Tamil and Kannada and then translated into English. In other instances the staff of *Sangama* wrote down the testimonies of those who preferred to speak rather than write. The fact-finding testimonies made by *Sangama* were invaluable in writing this report. We also did an e-mail interview with Dr. C. Venkatesh from Chennai, which was extremely useful in clarifying issues relating to the attitudes of the medical establishment to transgender people. The report has also drawn on a lot of media reporting which *Sangama's* documentation centre made available to us.

Basically, the report documents personal anecdotes and experiences that were shared by hijra and kothi sex workers in a series of group meetings. The testimonies were corroborated by the accounts of a number of hijra sex workers in a meeting with the Bangalore press arranged by the *PUCL-K* on 12 April 2002. This was extensively reported in a number of English and Kannada newspapers such as *Asian Age*, *Janavahini*, *Samyukta Karnataka* etc. The report also draws on these press accounts.

This report is a sequel to the first *PUCL-K* report, *Human Rights Violations against Sexuality Minorities in India* (2000) (<http://www.pucl.org/Topics/Gender/2003/sexual-minorities.pdf>) that documented violations against all sexual minorities. The current report focuses on the hijra and kothi sex workers, primarily because of the lack of information on these communities. It also uses information about hijras and kothis collected in the earlier report in order to ensure that this report can be read independently of the first report.

In this report, we have consciously tried to avoid the lens of medicine and anthropology in defining the transgender community and have instead sought to look at the transgenders as a culture, a community and a movement. Our purpose is not to exoticise the lives of hijras and kothis but to bridge the wide information gap as well as to bring about a measure of recognition and respect for these communities.

The report is a collective enterprise by people outside the hijra and kothi communities along with members from these communities in Bangalore. The narratives and voices of hijra and kothi sex workers are presented in the first person as far as possible. This is to ensure that the understanding of the narratives by outsiders (here we refer to human rights groups that have worked collectively

on this report) is appropriately strengthened by a subjective analysis of the everyday experiences of hijra and kothi sex workers by themselves. The research in the report has also involved interviews with doctors, lawyers, and queer activists. We attempt to document the new initiatives that are building a movement of transgender/ homosexual , hijra and kothi sex workers, along with an exhaustive appendix on resources on the community. This compilation of narratives, interviews, and political discussions has brought many hidden issues to light.

With respect to the names of people who testified in this report, we were in a dilemma because while it was important that the confidentiality of the people who testified be protected, certain other individuals made an explicit demand that their real names be used which indicates a powerful confidence in being visible. However we decided to uniformly change the names of all people who testified so that this report cannot become the basis for the persecution of any individual. In this report we have used the term hijra and kothi to describe different forms of transgender/ homosexual identity as being specific to India. To refer to the whole variety of identities which question the heterosexual framework we have used the term 'queer' which arose in the context of a dissatisfaction with lesbian and gay politics and a need to embrace the diverse ways in which heterosexism was contested. 'Queer' also implied a solidarity with the concerns of other movements, be it anti-racism, anti-sexism or struggles for a better public health system. It was initially a derogatory term used for sexuality minorities but has now been reclaimed by all those who are contesting a heterosexist social order. In the Indian context it would include all those who do not identify with the heterosexist norm including kothis, hijras, double-deckers, lesbians, bisexuals, transsexuals and gay men. The word queer is increasingly being used by the sexuality minority community as a way of embracing a multiplicity of struggles from numerous locations against the heterosexist social order.

Social, Cultural and Political Context of Kothis and Hijras

In this chapter, we attempt to understand kothis and hijras as a community in the broader context of Indian society and culture. We consider their position in different traditional societies in India and elsewhere and show how their marginalisation is due to an intersection of class, sexuality, and gender.

2.1 The Transgender Community: A Historical Background

There is a significant lack of understanding of transgender people as human beings whose lives encompass a complexity which goes beyond the normative correlation between biological sex on the one hand and gender identity and sexual orientation on the other. A person who is biologically male is expected to be 'masculine' and be attracted to women. However, a transgender person could be biologically male and often take on the gender identity of the other gender. In some cases, the transgender person might also want to alter the fact of biological maleness/femaleness through a sex reassignment surgery (SRS). However, the above description does not exhaust the full range of transgender behaviour and identity.

Transgender/ homosexual communities have existed in almost all parts of the world, with their own local identities, customs and rituals. They have been variously known as 'baklas' in Philippines, 'berdaches' among American Indian tribes, 'xaniths' in Oman, 'serrers' in Africa, and 'hijras', 'jogappas', 'jogtas', 'shiv-shaktis' in South Asia. The transgender expressions of sexuality or gender identity are often hidden or stigmatized by the wider society. Resisting this stigma has been part of the long struggle for survival of the transgender community to live alongside the society at large. Historically, transgender communities, in most cultures of the world, have attempted to appropriate (with varying degrees of success) rituals, folklore and legends in order to obtain a sense of self-validation and carve out a niche for themselves in the traditional social structures. It is for this reason that their destinies have been inextricably interwoven with the social arrangements and power structures of traditional society. Of course it remains an open question as to what extent do they appropriate existing rituals

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and to what extent are they unable to escape from the circumscribed roles assigned to them.

The hijra community in India has existed with a recorded history of more than 4000 years. Alternately despised and honoured for undergoing castration, they were part of a well-established so-called 'eunuch' culture in many societies, especially in the middle-east, holding sanctioned positions in the royal court (e.g. guarding the concubines where they were preferred to male guards since their sexless status ensured that they wouldn't seduce the women of the harem, taking part in theatrical performances, serving as advisers, and so on). It is important to understand these realities before we begin to consider the sexual non-conformity of the hijras and kothis in the contemporary Indian context.

However, mainstream society does not acknowledge that transgender people have their histories and traditions rooted in the Indian context. This reality will increasingly have to be taken into account by mainstream society and institutions.

In various cultures, transgenders were seen as having special powers due to their assumed 'third sex' dimension, and were allowed to take part in semi-religious ceremonies. Often they were tolerated and allowed to live in the role of the other sex, to pursue their occupations (including that of sex work), live in hamams (bath houses), cross-dress, and display other forms of transgender behaviour. Nevertheless they were often segregated and excluded from many occupations and community practices, and even traded as slaves.

2.2 Hijras and kothis: The Indian context

In a consultation our team had with a group of hijras in Bangalore, they were happy to share with us their experiences and insights on the hijra culture in India. What follows is a brief account of what they related to us.

The hijra culture

The hijras in India ('hijra' in Arabic means holy, and may have been derived from the Urdu word 'ezra' that means a wanderer or a nomad) claim a sacred space in the culture due to their third gender status which is called 'pingala' in Sanskrit, and invoked as 'shiva-shakti', the image of Shiva as half-male and half-female, representing a god who is ageless, formless, and sexless. Like other communities, the hijras trace their origins to foundational myths in Ramayana and Mahabharatha. The episode in Ramayana involving hijras occurs when Rama is

banished for 14 years. When he leaves for the forest, he turns around to see a large number of his people following him. Rama appeals to 'all the men and women' to return to the city, but the hijras belonging to neither category do not feel bound by his injunction and want to stay with him. Impressed with their devotion, Rama sanctions them the power to confer blessings on auspicious occasions like childbirth, marriage, and inaugural functions — hence the custom of 'badhai', in which hijras sing, dance and confer blessings.

Another legend is to be found in Mahabharatha involving Aravan, son of Arjuna and Nagakanya, who offered to face Bhishma in battle and be slaughtered since Bhishma had vowed revenge. Aravan had one condition for sacrificing his life: he wanted to spend the last night of his life in a state of matrimony. Since no one offered to marry him, Krishna assumed the female form of Mohini and married him. The hijras in Tamil Nadu are feminine homosexuals who take Aravana as their progenitor and call themselves 'Aravanis'.

In another legend, a king in Gujarat fell madly in love with 'Bahucharimatha', a beautiful goddess riding a peacock. The king wanted to marry her, but she wanted to remain a virgin. When he persisted in his entreaties, she relented but asked him to first have a bath in a pond. On coming out of the pond, he was horrified to discover that he was emasculated, and could not consummate his union with the goddess. The goddess consoled him by saying that he would find a community of people who would voluntarily castrate themselves in his honour.

These and other Hindu legends show that hijras in India had a sanctioned role in Hindu society, especially through the practice of badhai'. The 'badhai' culture is more characteristic of North India; hijras in South India are involved in ritual roles as jogappas, jogammas, Shivshakthis, and so on. They take part in Karaga processions and various jatras along with men who cross-dress as women for this occasion. Nevertheless, this ritual role is marginal to the life of hijras in South India. In their conversation with us, the hijras expressed their perception that hijras in South India did not have the cultural role (except in Hyderabad) that they do in North India, and mainly take up sex work as the way to earn a living, either by soliciting customers on the streets or by joining hamams. It is a dangerous profession, as they are often subjected to contemptuous and violent treatment by customers and the police.

Most hijras in India live in groups that are organised into seven houses ('ghatanas') situated mainly in Hyderabad, Pune, and Bombay. Each house

headed by a 'nayak' who appoints gurus, spiritual leaders who train their wards ('chelas') in 'badhai' (dancing, singing, and blessing), and protect them within and outside the community. It is a system that replicates patriarchy, creating interdependence between the ageing guru and the 'chela' who has been cast out of her family. Disputes among hijras are decided within the community by the 'nayak' and senior gurus acting as law makers, and administering punishment such as imposing fines and expulsion from the community.

Often there are a host of prohibitions and taboos. Thus, any person who wishes to become a hijra has to live in 'satla' (female attire) in the community for at least a year and observe the rituals and obligations of the community, such as earning money for the running of the household and for the guru. If she is unable to adjust to the requirements of community life, she will not be allowed to go for 'nirvan' (castration); 'nirvan kothis' are often favoured over those who don't undergo castration ('akwa'/ 'zenana'). The ceremony of castration in the hijra community involves both penectomy and orchiectomy (removal of penis and testicles). Most hijras are biologically born as male although a very small percentage are born hermaphrodites/ intersexed.

The 'kothi' culture

'Kothi' is a term that is used across South Asia with local variations. Kothis often see themselves as non-English speaking, with a feminine homosexual identity distinct from the gay/ bisexual identity which tends to be the expression of English-speaking homosexual/ bisexual males. Kothis largely belong to non-English speaking lower middle-class and feel their marginalisation (due to lack of access to resources/ information/ employment etc.) in terms of language, education, socio-economic status as well as sexuality. In other words, though a kothi can be described as a male homosexual who takes a feminine role in sex with other men, the kothi construct is not only a sexual/ gender identity but also a socio-cultural one specific to the south Asian context.

Due to the societal and family pressure to marry and reproduce, many kothis marry and raise families, and have same-sex relationships outside, often under covert circumstances or in shame. Many other kothis are driven to sex work due to many complex reasons, including economic necessity and non-acceptance and rejection by the family. Further, kothis are often subject to sexual harassment which makes it impossible for them to continue in the workplace.

In terms of their gender identity and role, kothis like hijras are transgender persons who identify themselves with the feminine gender. However, whereas hijras often settle into a fixed gender role after castration, kothis display a dual gender identity alternating between the masculine role of the husband demanded in the marriage relationship and the feminine role in the same-sex relationship outside. This performativity gives the kothi identity a very provisional status which is assumed in different contexts for various purposes by effeminate homosexual men, cross-dressers, and hijras who have not undergone castration (also called 'akwas' if they are awaiting castration, and 'janki/ janani' if they do not wish to undergo castration). Kothis express their feminine identity by wearing make-up, women's clothing, cooking, dancing, etc. In sexual health terminology, kothis are often described as playing the passive role in sex and described as preferring to be sexually penetrated by other men called 'panthis'. Similarly terms such as double-deckers/ do-paratha etc. are used to describe those who play both masculine and feminine roles in sex. However ascription of such sexual roles is less important than the self-perception of kothis as expressing a feminine gender identity.

There is a symbiotic relationship between kothis and hijras which has been strengthened due to the lack of support systems for kothis in urban spaces and mofussil towns. This has led kothis to depend upon hijra subcultures for both support and succour. Hence there is a constant interchange of languages, symbols, and mythologies of alternative sexualities/ genders between the hijra and the non-English speaking homosexual subcultures.

Yet for a variety of reasons, kothis are one of the most disempowered groups in Indian society. Kothis form loose social-sexual networks located in certain specific environments (e.g. public parks and other cruising areas) seeking out others with shared characteristics of desire, behavior and sexuality. Since their feminized behavior does not conform to the masculinity demanded of 'real' males in Indian society, they are stigmatized by their family members as 'not man enough' (thereby bringing shame to the family) and hence fit for abjection. By contrast the panthi (the active male partner of both kothis and hijras) is a masculinist identity, and hence is unlikely to be targeted.

Kothis are reviled by society, and abusively addressed as 'gandu', 'chakka', 'khoja', 'ombodu', 'kattavandi', 'gud', and so on. This often results in lack of self worth and self-esteem which makes kothis even attempt suicide at some point in their lives. Further, they are discriminated and harassed in the workplace

in educational institutions, and are trapped in low levels of literacy. They are extremely vulnerable to STI/ HIV infections and possible infection to their wives since they have multiple sex partners and have little access to STI treatment services.

However one cannot pathologize the kothi community in general since many kothis are very strong and see their gender non-conformity as a way of questioning the rigid heterosexist norms. The later part of this report demonstrates that kothis have been quite effective in organizing protests against police harassment and violence.

2.3 Marginalisation of Kothis and Hijras: The Intersection of Class, Gender and Sexuality

Indian society is deeply stratified along the axes of class, caste, religion, language, education (among others), which intersect with sexuality to create deeper oppressions. Although hijras have a sort of sanctioned and visible place in Hindu society (especially in weddings, births, and festivals), in the contemporary context, it's the class dimension of the hijra and kothi community that has a major impact on their access to education, employment as well as on the violence they suffer on a daily basis, especially when they choose to pick up sex work.

Our discussions with many hijras and kothis in Bangalore showed that they have willingly entered sex work for a variety of reasons. Many of them are in their twenties and are looking for job security and independence. They have moved into sex work after trying out a number of other jobs. Sex work becomes necessary in view of the fact that no employer is willing to retain them once their gender identity becomes public. Often they have to support their parents and sex work seems the only viable option.

The testimonies given below indicate that the term 'sex work' is preferable to the term 'prostitution' in recognition of the fact that all the people above have made a choice albeit under extremely difficult circumstances. As is clear, kothis and hijras take up sex work for a variety of reasons. One reason involves the pragmatic consideration of supporting the family. There is also the pride which comes from being able to support the family. Another reason has to do with the self-acceptance of being a hijra and with the related discovery of a certain kind of freedom that living in the hijra community can provide. Many hijras and kothis fiercely assert that there is nothing disreputable about being a sex worker and it is as legitimate a piece of work as any other.

Testimonies

Leela (25) was working as a construction worker (bar bender) on a daily wage of Rs.70-75 which was insufficient to support herself and her old father. Like any male and hijra sex workers, she earns about Rs. 100-150 daily from sex work.

Lata (age 20-21, identifies as a kothi) was working in a major private company for three years and made the acquaintance of some hijras who took her to a hamam and initiated her into sex work. She can't go back to her old job because she wants to be accepted as a hijra (i.e. man dressed in a sari). She feels that once you take up sex work, it's difficult to go back to other kinds of work which are less remunerative.

Devi (age 28, identifies as a woman) was employed but could not earn enough to support herself and her old parents living in a village in Tamil Nadu. They know that she has joined sex work and she is confident of looking after herself and her family.

Kalyani was studying in an engineering college but could not pursue her studies after her sex change operation. Today Kalyani does sex work.

Rani was employed in a departmental store as a sales assistant, but could not go back to the job after her sex change operation. She became a hijra in a hamam and learnt sex work. She has studied up to II PUC. At present she is employed in an organization, and continues to do sex work outside working hours. Having worked in this organisation, she feels no guilt at being a sex worker and is in fact proud that she can combine social activism and sex work, neither of which she wants to give up. She feels that in spite of the difficulties in sex work she has greater control over sex work as compared with any other job.

Ruma (25) finds that, for kothis, working outside the community exposes them to a lot of harassment. In contrast, in sex work one is free to do what one likes and the restrictions are fewer.

Roopa, who echoes Ruma's sentiment, wants to live wearing a sari, and she can't wear pants or a shirt anymore. Once she started doing sex work, her mind pulled her into the work and it was difficult to leave it.

However it needs to be noted that the choices available to the hijra community function within certain structural constraints of class and sexuality, for it is highly unlikely that a hijra, for instance, can become a CEO of a company, get a government job, or work as a lawyer or a doctor. There are very few places, at least in south India, where hijras can find employment and are treated with dignity. Further, in the case of the hijra community, class (which in some cases permits movement) is a permanent feature that functions like caste, not permitting any upward mobility. Sex work and begging remain the only available occupational choices for the hijra community. Thus gender/ sexual non-conformity combined with the societal perception of hijras limits the kind of choice hijras are allowed to make.

Discrimination on the basis of class, gender, and sexuality not only limits the choice of profession and the possibility of economic advancement but also impedes access to education and information about lifestyle choices of sexuality minorities. Thus most of the information on sexuality, lifestyle and the rights discourse on sexuality minorities is available only in English, putting it out of reach for hijras and kothis, many of whom don't know how to read and write.

Violence and Abuse: Testimonies of Kothi and Hijra Sex Workers

3.1 Two Testimonies

From the human rights perspective, the central concern about hijra and kothi pertains to the state and societal violence inflicted on them. To convey a picture of the pervasive nature of the everyday violence as well as to conceptualize the different kinds of violence, we present two narratives where violence plays a dominant part.

We would like to warn readers that some of the following testimonies might be shocking and crude in terms of the graphic language with which the sexual abuse and degradation is described. Our intention is not to titillate or merely to produce disgust but to convey in some small measure the horror and violence, both physical and psychological, that hijras and kothis face on the street.

Some of us might never want to read these testimonies again preferring to turn a blind eye to this form of social suffering. Our purpose in retaining the testimonies in all their crude violence is to spur readers of this report to assert that it is unacceptable that people are subject to such levels of violence at the beginning of the twenty-first century.

Through efforts such as these we need to question the violent exclusion of the heterosexist social order. To an ordinary person the violence of the heterosexist social order, as we term it, is invariably rendered invisible by the smooth functioning of existing societal institution. We hope that bringing to light, the otherwise hidden violence of the heterosexist social order will lead to a process of questioning. This in turn should lead to a safer climate for all those who don't conform to the norms of conventional society.

From the human rights perspective, the central concern about hijra and kothi pertains to the state and societal violence inflicted on them

In fact when we compiled the testimonies, we asked ourselves the question why it is that some people face this violence on a day-to-day basis. The rest of the report attempts to show that what makes this otherwise unthinkable violence possible and even acceptable to large sections of people is the complicity of the structures of law, family, medicine and media.

Sachin's testimony

My name is Sachin and I am 23 years old. I am the fifth child in a family of four elder sisters. As a child I always enjoyed putting make-up like 'vibhuti' or 'kum-kum' and my parents always saw me as a girl. I am male but I have only female feelings. I used to help my mother in all the housework like cooking, washing, and cleaning. Over the years my sisters got married, my parents became old. I was around seventeen years. I started assuming more of the domestic responsibilities at home.

The neighbours started teasing me. They would call out to me and ask "Why don't you go out and work like a man?" or "Why are you staying at home like a girl?" But I liked being a girl. I felt shy about going out and working. Relatives would also mock and scold me on this score. Everyday I would go out of the house to bring water. And as I walked back with the water I would always be teased. I felt very ashamed. I even felt suicidal. How could I live like that? But my parents never protested. They were helpless.

Then one day my parents asked me to leave the village to avoid the shame. "Go work somewhere else", they said. I don't know how to read or write, I never went to school, how would I ever get a job? That night I cried a lot. I realised that for my parents respect in society was much more important than their own son. I drank some rat poison, hoping to kill myself. But I started throwing up which woke my parents up. They rushed me to the hospital where I recovered. I told my parents, "You wanted me to leave, I have nowhere to go. No education. No skills. I wanted to kill myself."

After this incident, I decided to leave home. One night, I took my suitcase with five shirts and five pants. With Rs. 500 in my pocket I left for Tirupathi. I sat outside the temple and cried. Then an old man came and asked me why I was crying – I told him my complete story. I told him that I like wearing sarees, make up, flowers in my hair. He heard my story and told me about the hijra community. He asked me to go and join them. That was the first time I heard about the hijras.

Later on I was sitting outside the temple, wearing a shirt and pants but with some make-up, when someone picked me up and asked me to come along to his hotel room. I had sex with him. He was very nice. He was leaving that evening but had paid for the hotel room till the next morning and asked me to stay there till the next morning. He also gave me Rs.200.

Since I had the room to myself that night, I went out in the park and managed to pick up two more guys. I brought them back and had sex with them in my room.

They both gave me Rs.100 each. This changed my life. I suddenly realised that I wasn't useless. I could take care of my self, I could now live – through sex work.

From Tirupathi I moved to Bangalore where I made friends with some hijras. They helped me get a job at Bangalore Dairy in Hosur Road. There were three shifts of 8 hours each. I had the night shift. I would try to be very masculine at work, walk and talk like a man but people still noticed that I was effeminate, they realised that I was a hijra. In fact one of the employees came to me and asked for a blow job. I refused saying that I was a man and not a hijra.

In the Dairy I had just one friend who I was very close to but it was nothing sexual. During the night shift most people would go up and sleep on the terrace. This friend of mine called me to sleep next to him on the terrace one night. As I went to sleep, some one just took my hands and cupped them on the floor and four guys one after the other had anal sex with me. I realised later that this friend of mine was making money out of it. Next day the inspector of the dairy knew all about what had happened on the terrace. Instead of helping me, he screamed at me and fired me from the job.

I moved in with an old friend of mine from the village, who gave me shelter. Getting a job was very difficult. Wherever I went they asked for qualifications and a smart appearance, neither of which I possess. Finally I got a job in one office. The owner needed an office boy who would also have sex with him. I co-operated. But I wasn't satisfied doing both of these things and the pay was also very low. So I just decided to do sex work directly. But sex work was not easy. The police would just come in the night, see me walking in 'satla' (drag) and would just hit me with a lathi. I became scared of even walking on the streets.

Then I learned about my rights. Things like one should not have sex in public spaces but try and have it in private spaces. Then Preethi asked me to join her. She introduced me to everyone and this way I started helping other kothis and hijras who were doing sex work.

I once called my parents after years, they cried a lot. I said I can't come home because you are embarrassed of me. Then my parents suggested that I come home in the night instead of coming during the day. I followed their advice and went to visit them for the first time after I had left home. I reached home in the night. We had a great time, we ate in the night, talked a lot, and it felt good to be back at home. But suddenly it was nearing dawn and my parents asked me to leave before sunrise.

On my next visit I learnt that my parents had heard from other people that I had become a hijra in Bangalore. This time they interrogated me and my mother insisted that I show her proof that I haven't been castrated. I had to undo my pants in front of my mother, which was very embarrassing. I am an akwa. My mother was very relieved.

I am beginning to see a change in the way my family treats me. Now because I am earning, my mother wants me to stay at home. When I go back to the village, no one says anything, because I am earning now. My mother asks me for a fan, a tape recorder, or a new stove. I have been giving them money for all this. I have also bought jewellery and other presents for my sisters' kids.

Sex work is not always easy. Often, clients having sex with me would reach an orgasm and then quickly runaway without paying. I used to go to the park to pick up customers. Once I met a man but he was a police officer. He asked me to come and have sex with him. I asked for Rs.50 but he said that he would only give me Rs.20. I said okay and started sucking him. But after he came he just walked away. I stopped him and asked him for my money but he said that he won't pay. I told him that I would complain, and he laughed at me stating that I had no proof. Then I showed him the condom, tied carefully in a knot that still had his sperm. He said, "Who knows that it's mine?" and left the place.

Once a customer picked me up and took me in his car on the ring-road. We got off the car in the middle of the road and went into the bushes. After he had had his fun, the customer went into the car first, telling me to wait and come out in five minutes to avoid suspicion. But the minute I came out of the bushes the man drove off in his car leaving me alone at 10 p.m. in the middle of the ring-road. What scared me most was that my pants and shirt were in his car. I was staying with friends in a rented apartment and so I had to change my clothes. I could not go back home in the 'satla'. I was terrified. Then suddenly a policeman came and caught me. He took me back in the bushes and asked me to take all my clothes off. He wanted to see if I could get my penis up. I was completely naked and terrified. Then he started hitting me with a lathi. I begged at his feet to leave me. I also gave him Rs.100.

Then he asked me to leave in a naked condition, refusing to return my clothes. But as I turned I could sense that he was getting sexually aroused. He wanted to fuck me. I didn't have a condom. I didn't even like taking it in the backside. Then he hit me very hard. He covered my mouth with his hand and started fucking me. He was very big, and without a condom, it was all so painful. My ass was bleeding. I could feel blood going down on my thighs. The policeman shouted at me, saying "Hey, stop

crying. I will hit you again if you cried". Then he lifted me, asked me to bend and fucked me more. Finally he was done and he left, thankfully leaving my clothes with me.

I put on my 'satla' and was walking slowly on the street. I was under a lot of pain. But unfortunately it wasn't over yet. A small tourist van came and stopped in front of me on the road. There were around seven people in it, two sleeping and the others drinking and smoking. They asked me what I was doing in the middle of the night and dragged me into the van.

They forced some alcohol down my throat and also forced me to smoke. I got a bit drunk. Then they took an empty bottle, broke it in half against the car window and gashed my arm with it. I bled very badly. I still have these two huge marks on my hands. My right hand was full of blood. They wanted to have sex with me. I was tired and angry. I screamed. I said "You want to have sex with me, okay, then all of you can have sex with me". I was tired of fighting it.

They stopped the car, took me into the field, put me down and started having sex with me. I was forced to have anal and oral intercourse with all of them, one after the other, even sometimes together. I was still bleeding. After it was all over, I just lay there exhausted and completely lost. I stopped thinking. It was already dawn, 5 a.m.

I somehow dragged myself to a hijra's house close by. I woke her up and she took me inside, gave me a lungi and a shirt to wear. She washed me, nursed me and took me to the hospital. This incident took place in 2001, after which I learnt an important lesson. I never wear 'satla' during sex work now. I only wear 'satla' in hijra functions.

I have moved on now. I now help other kothis and hijras by teaching them and giving them all the information that I have learnt. I don't believe in any god anymore (Hindu or Muslim). They have never helped me at all. Now I have my own hands and I do sex work and fend for myself.

Smita's testimony

Smita for the past three years has been living with her husband Tejasvi. On the night of 18 March 2002, at around 9 p.m, she and her husband were standing in front of a commercial complex on St. Marks Road (opposite Bishop Cotton Girls' High School gate, in front of "Richie Rich" Ice Cream Parlour). Four policemen in a Hoysala van (no. 1) dragged her by her hair and pushed her into the van by force, snatching away her mobile phone.

One of the policemen sat on Tejasvi's scooter and forced him to drive the vehicle to the Cubbon Park Police Station. Smita was also taken to the Cubbon Park Police Station in the Hoysala van, and on the way to the police station, two policemen who sat beside her in the van sexually harassed her by fondling her breasts.

In the police station, she was pushed into a room with her husband. Around 15-20 police men stripped her in the presence of a senior police officer (Circle Inspector Munirathnam Naidu) who was in the Police Station at that time. Smita describes him to be "around 50 years old, wheatish skin colour, 5'4" in height and very fat". All the 15-20 police men stood around her, sexually abusing her by touching all over her naked body. They humiliated her further by forcing her to spread her thighs and touching her sexual organs.

Many of them hit her with lathis on her head, hands, thighs, shoulders etc. They also attempted to shave off her hair. She continuously begged them to let her go and even fell at their feet. They verbally abused her by repeatedly referring to her as 'khoja, gandu, bastard, son of a bitch' and used the foulest language as they continued to beat her, making vile comments like: "Did you come here to get fucked anally?", "Whose cocks did you come here to suck?", "People get AIDS from you, one day you will die of AIDS, chakka, I will fuck your mother".

They also stripped Tejasvi and physically attacked him. They slapped him, hit him all over with their lathis and kicked him. They verbally abused him as well.

It was only after Famila, an employee of Sangama, came to the police station and intervened, that Smita was released at around 10 p.m, and was threatened with dire consequences to her husband if she informed anyone about the matter. Fearing for her husband's safety, Smita immediately wrote out a plea and faxed it to V.V. Bhaskar (Director General of Police, Karnataka), and to the Chief Justice of Karnataka High Court.

The next day it was revealed that the police had booked Smita and her husband Tejasvi under the Immoral Trafficking (Prevention) Act. Tejasvi was produced before the court on the 19th where he stated that the police had beaten him up. The magistrate ordered a medical examination and also ordered the Police Circle Inspector Munirathnam Naidu to be present during the hearing the next day. The medical examination report has clearly stated that Tejasvi had multiple injuries on his left arm. Tejasvi was released on bail the same day. Smita went

underground to escape arrest by the police who a few weeks later re-arrested her and kept her in jail for a week on a false charge of running a brothel. She moved an application for anticipatory bail and had to spend most of her life savings to get out on bail. While Smita's case spurred the community to act and brought about an improvement in the treatment by the police of hijra and kothi sex workers in Bangalore, Smita continues to attend court hearings in this case which is presently being represented by Sangama's lawyer.

The above narratives are indeed brutal and shocking instances of violence. A reading of Smita's and Sachin's testimonies might give the impression that the violence is exceptional and arbitrary. But these are not isolated incidents at all. Such violence is incessant, widespread and an ever-present reality of the daily life of hijra and kothi sex workers in Bangalore. The violence is committed not only by the police or the state but, as the narratives show, by the general public itself. The source of such violence is clearly the prejudice about hijras' 'deviant' sexuality and gender identity which transgresses society's binary division of gender into male and female – indicating that what appears as random and arbitrary violence is in fact part of a methodical policing for the preservation of mainstream, therefore heterosexist, society.

The next set of testimonies by kothi and hijra sex workers that follow illustrate how sexual violence is used to degrade, humiliate and torture them. These narratives also enable us to understand the reasons for the centrality of sexual violence as a mode of control over hijra and kothi sex workers. The testimonies have been classified according to the sites where the violence occurs as well as the context of the violence. The nature of harassment and abuse clearly varies from public spaces like parks and streets to custodial institutions like jail and police stations. But we also learn through the testimonies that even private spaces such as homes do not afford immunity from violence.

The classification of state and societal violence against hijra and kothi sex workers can be done under the following heads:

- Harassment by the police in public places
- Harassment at home
- Police entrapment
- Abuse/harassment in police stations
- Rape in jails

3.2 Harassment by the police in public places

Due to the extreme intolerance they face in their families, hijras and kothis often adopt public spaces like parks or certain streets as social spaces where they meet sexual partners, lovers and even clients. Since they can't afford the protection and privacy afforded by independent accommodation, they are driven to making furtive sexual contacts and having sex in parks and public toilets. This makes them vulnerable to violence, inflicted largely by the police.

Testimonies

Gautam, a 21-year old physically challenged kothi: "I was sitting behind the Majestic Bus stand (Kempegowda Bus Station, the main city bus station in Bangalore) at 8.15p.m. waiting for a friend who had promised to get me a house on rent. I was not with any one nor was I soliciting. Two persons came in civilian clothes, whom I mistook to be watchmen since I was not sure if they were policemen. They were sending all the people away from that place and finally they came to me and asked me why I was sitting there. I said that I was waiting for my friend. The younger of the two started verbally abusing me, while making obscene references to my mother. I objected to his foul language and demanded that he should treat me with propriety and respect. I asked them to reveal their identity, since I had mistaken them to be watchmen. But the abuse continued and when I protested again, the younger of the two policemen seized my collar and I fell down. They came to know that I was physically challenged. The police beat me up knowing well that I am physically challenged and that I was not doing anything legally wrong. They also threatened to shift me to the beggar's colony. They continued to abuse me calling me 'DD9' ('nine' is a derogatory term for hijras/ kothis/ homosexuals), a term which I resented. I clapped my hands and said, 'Yes I am a nine, I was not doing any sex work and was waiting for a friend.'" Later he was dragged to the Upparpet Police Station where he complained to the police about the cop's behaviour.

Aishwarya, a 23-year old hijra: "I was waiting in the bus-stand for the bus. Suddenly a Hoysala police van came and stopped in front of me, they were extorting money from the other female, hijra and kothi sex-workers, and they came to me and asked me for money. I told them that I had money only for the bus to go back home. When I said this, they just snatched away the wig I was wearing and threw me into the van. They were all laughing at me, they asked me what was there in my blouse, whether they were real breasts or artificial ones, then they started pressing them and feeling them even after I told them that they were not real. They demanded that I should pay

the money or else I would be booked under a theft case. I fell at their feet and said that I am poor, I do sex work for food, but their ears were deaf. Finally I was taken to the Cubbon Park police station and kept there for 3 days."

Lakshmmamma, a middle-aged hijra sex worker: "I sleep on the road and do begging and sex work. I was sitting in a park when a police man attacked me and tried to drag me into the street. I threw a stone at him, and he grabbed me. I started abusing the policeman and screamed loudly to draw attention, and he ran away. On another occasion, a Hoysala van came when I was standing near Chinnaswamy stadium, the policemen tried to rob me, and snatched away my medicines."

3.3 Harassment at Home

Although public spaces do indeed expose hijras and kothis to extreme violence, the private space by itself cannot guarantee safety either. For most hijras and kothis a long struggle is involved in leaving the confines of their family and setting up a house of their own, albeit with meagre resources. This home is a private space, which should guarantee them, like everyone, a sense of personal security.

Unfortunately, hijras and kothis are subject to constant surveillance by the police, which often leads to their intrusions into the private spaces of the home as a continuation of the harassment that the hijras face on the street. This is illustrated by the following account in which the police raided a house of the hijras on the allegation that it is a brothel:

Swati's testimony

Swati, whose identity as a hijra is accepted by her family, has been staying with her parents for the past one year. She states: "On this particular day I had invited my friends namely Smita, Preethi, Swati's boy-friend Lawrence, Smita's husband Tejasvi, Preethi's boy-friend Thomas, Roopa, Ajesh and Shashi to my house for a party. Everything went on fine the whole day until evening at around 6p.m., when all of a sudden eight policemen (some in their uniform, some out of uniform) from Byatarayanapura police station came to my house. They said that a neighbor had complained that we were all women doing sex work at that time with our clients. The police started using abusive language and also hit Tejasvi. We told them that it was my parents' house and that we were all having a party with our friends. This kept them quiet for a while, but when they found out that we were not women but hijras,

their treatment of us changed. They started asking stupid questions to our boy-friends such as:

"Don't you people get a female, why are you with these kind of people?"

"How do you enjoy sex with them?"

"Are you all impotent, are you all 'chakkas' (derogatory term for hijra)?"

"Do they have real breasts and vaginas?" and many more.

Later they also forced us to show our breasts, one policeman also physically put his hand to feel our breasts. They left us but took Lawrence, Tejasvi and Thomas to the police station in the Hoysala van.

3.4 Police Entrapment

Another, and a more insidious, technique used by the police in their efforts to regulate 'public morality' by targeting hijra and kothi sex workers is entrapment. The following two accounts demonstrate how in different ways through entrapment the police target hijras as well as their clients. It is important to note that in such cases most of the hijras and their clients are let off after a bribe, turning this exercise into a lucrative commercial racket involving the police.

Testimonies

Suneeta, a 21 year old hijra, states: "I got a phone call when I was at the office at 6p.m. The caller said that he was a customer and would be waiting for me in front of the park at 7.30p.m. I took an auto-rickshaw, and went to the park, where I saw two Hoysala vans parked with a car in the middle. I knew that they were plainclothes policemen and I asked the auto-rickshaw not to stop but to take me elsewhere. The Hoysala followed us for a while before we were able to shake them off."

On another occasion I was picked up by a customer who gave me Rs.700 advance promising to pay the remaining Rs. 800 afterwards. A Maruthi van came near and I got scared realising that it was the police. The Kinetic Honda on which I was sitting was not very fast and the van finally caught up with us. One of the men in the van asked us who we were and whether my customer had a driving license. I asked him who he was and if he was the traffic police whether I could see his ID. To which he asked me to get into his van. I replied that I will come to the police station but not in his van. It was only then that he left us."

Roopa, a 31-year old hijra states: "Often I mostly walked the road or just waited standing. I really didn't have to do much. Men would come up and begin talking, the shy ones asking if I need a drop, others getting right down to business with a 'how much?'. Once or twice I've wasted a good hour or so with people who really just wanted to give me a lift. It was 8p.m. in the evening that day and I was walking along on the footpath at one of my regular places.

"Suddenly five men surrounded me. Scared, I tried to run away. Two of them held my arms so firmly that it hurt. 'What are you here for?' asked one of them. 'We've had a lot of complaints about women like you picking up men from here' said another. Not in uniform, but they were clearly policemen. I was initially scared that they were goondas and that I was going to be raped. Not that it couldn't happen with policemen, many hijras and kothis have been raped even in police stations. It's worse sometimes and you can't even complain. 'I'm a hijra forced on the road to feed myself. Please let me go', I pleaded. 'Wait here for some time and we'll let you go,' they said. Scared and confused now, I thought that I was going to be set up in some kind of a serious false case. I pleaded with them and even shed a few tears begging them to let me go or at least tell me why they wanted me to wait there. One of them assured me that they're only going to use me as a bait to catch some clients of mine and that I'd be let off if I cooperated.

"They instructed me to act 'normal' and then stood at a distance from me. I looked around to see if I could run. I decided it was foolish and waited. I wondered if there was some way to stand or look that would not make me look like a sex worker. But I soon realised that there's no such thing or that I was not talented enough for it. I fervently prayed that no one would stop to talk to me.

"A car approached, stopped and the window screen came down. I knew there was a face peeping out from it but didn't even want to look. Almost immediately the five cops surrounded the car. One of them pulled out the car keys and the other dragged out the driver by his shirtsleeve. The driver was whisked off by two of them and I heard him repeatedly ask the cops who they were. I didn't hear them give him a reply. One of the cops got into the driver's seat and parked the car at the closest parking lot. And I was back standing there by myself.

"Their next victim was a man on a bike. He stopped and asked me if I needed a drop. I stared at him and angrily muttered 'no, no'. But the policemen jumped in and took him away. They ignored his demand to know what crime he had committed. This time they had to use some force and told him 'Come to the station and we'll let you know.' His bike was parked next to the car.

"One of the cops threatened to arrest me if I tried giving any signals. He even ordered me to sweet talk anyone who came close to me. After this I resigned myself to counting as they had promised to let me go after they netted ten men. It shocked and angered me that in the span of the next hour they had their ten men. There have been days, on the same road when I've had to wait for more than an hour before a single customer approached. And here were ten men, no money, and I was still terrified.

"I again pleaded with them that they should let me go as they had their ten men. They asked me to wait until they had five more. I also overheard that an inspector would be coming there on his rounds. I was sure that they weren't going to let me go. But having no other option I waited. Four more men were dragged away. One of them had just stood next to me.

"Soon a van arrived and all the men were put into it and taken away. Probably let off after they paid up. Because as far as I knew there was no law they could be arrested under. I of course could have been picked up for soliciting. I was chased away from there with a not-so-stern warning that I shouldn't be seen there again. I was relieved but knew that I could never work there again. I was terrified, if not of the police, of the possibility that any one of those 14 men would get back at me. If I was lucky I might get away with a slap or two but the thought of handy acid bulbs still scare me."

3.5 Abuse/ harassment in police stations

Police stations have always functioned as custodial institutions in which there is tremendous scope for both harassment and abuse. The powers of the police, which are enormous due to laws like *ITPA* and Section 377, are minimally checked in public spaces, but function unbridled in a closed environment such as the police station. The various legal norms which govern the behavior of the police are completely disregarded in the police stations with the police violating all canons of civilized behavior, as the following documented experiences testify:

Testimonies

Nasir, a 27 year old kothi, states: "The Sampangiramanagar police filed a false case against me under a wrong name (Saleem) and my father's name as Abdul, and put me in the lock-up. When I protested against this confinement, they told me we cannot do anything with you, so just be here. I was made to be there until 11 p.m. and after approximately an hour, three policemen came to me and asked me whether I have a penis or not, "Let us see". When I didn't listen to them, they started hitting me in order to make me take off my clothes. One policeman put a stick into my arsehole

saying you are a 'khoja' (derogatory term used for kothi/ hijra). And then one policeman forcibly inserted his penis in my mouth and the other in my arse, and so did the others, one by one, till they all came out and left me. In the morning at around 5a.m. I said, 'I want to go back home, my brother will be waiting and worried about me.' Then they said 'let the police inspector and the police person who brought you here come back then we will let you go.' At 9p.m. my fingerprints and footprints were taken, I asked them why my finger prints were being taken, I am not a murderer. They shouted at me saying 'do as we say'. At 1:30p.m. I was taken to the Bangalore City Police Commissioner's office where my photographs were taken after which I was taken back to the police station and asked to sign on some papers which I did. Around 2p.m. I was taken to the magistrate's house, there we had to wait for half an hour because he had gone to a wedding. Then the police told me to agree with what ever we ask you in front of the magistrate and not to say anything else or we will beat you. But when he arrived I told him that I had not made any mistake, I am innocent. But even the magistrate did not listen to me, he just told me to leave. Next I was taken to the Central Prison where the police went through my clothes and took away my belt, my house keys and whatever little money I was left with after the police in police station had taken most of it.

Gautam, a physically challenged kothi states: "In the police station I was beaten up again after having been beaten up outside. (See Gautam's testimony earlier in the section on "Police Harassment in Public Places"). So I told the police that I wanted to call my people. The Inspector came and spoke to me asking for details. I gave my address and Sangama's telephone number which the Inspector tried calling, but could not get through. The inspector instructed the constables not to bring hijras and handicapped people to his police station unless they were doing sex work in public causing nuisance. Later the inspector told the constable to put me in an auto rickshaw and send me home which the constables did.

Aishwarya, a 23 year old hijra, states: "In the police station I was stripped and then the policemen one after other beat me up, and verbally and sexually abused me by feeling me all over. I was not given proper food to eat, even though they all ate in front of me. Later I was taken to Bangalore City Police commissioner's office, there they took videos in which I was made to show how I did my make-up. They asked me to wear my wig and dance in front of them which I did. Then they took mug-shots of mine saying that I was a thief."

Geetanjali, a 23 year old hijra states: "They took me to Cubbon Park Police station where the police did not ask me anything but just beat me up. None of the policemen tried to listen to my account of the incident when I tried to explain it to them. Eight policemen together beat me up and put me in the lock up. They were so curious to know if I had a penis that they stripped me. They hung me up horizontally with ropes and beat me black and blue."

Roopa, a 30-year old hijra states: "For the last five years I have lived in a hamam (bath house run by hijras) in Bangalore and was also a sex worker. The police constantly harassed me and extracted amounts of Rs. 50-150 six to seven times in a month. They have arrested and detained me in police stations without booking a case and verbally, sexually, and physically tortured me inside the police station. Sometimes they would beat us up very badly and strip us to see our genitals and make fun. Any policeman walking in and out of the station would either kick or beat us. Once they arrested me on false charges and made me clean up the whole police station and did not even give me a blanket even though it was the winter season. The food that they gave me was on a sheet of paper and it was dripping on the floor. They forced me to take it from the muddy floor and eat it. Later they told me that they were producing me in the court and warned me not to speak anything in the court. I was let out even before they produced me in the court and the police again took Rs. 200 from me."

3.6 Rape in jails

Jails are custodial institutions where feminine behaviour by men is always at a greater risk of mistreatment by both authorities and inmates. Jails are closed institutions with a strict segregation based on sex. This ensures that male wards in general are highly masculine spaces with no heterosexual contact. The cult of masculinity promoted by the jail environment necessarily entails a targeting of those considered not 'masculine' enough. As a consequence, kothis and hijras admitted to jails become the sites for the enactment of the most brutal forms of sexual violence, as the following testimony reveals.

Testimonies

Nasir, a 27 year old kothi, states: "I was taken to the Central Prison where the police checked my dress and took away my belt, my house keys and whatever little money was left with me. After the police took the most of it, they let me keep only the address book. And in afternoon I was given some food, which I couldn't eat due to its bad smell. For that whole day (20 Jan 2002) I was kept in the admission room. The next

day I was given an admission card along with a bed sheet and a plate and sent to the cell. That night at around 11p.m., about twelve men came to me, and one by one they forced me to have anal and oral sex with them until the next morning. Because of this I got a severe back ache and my anus started paining; when I went to the toilet to answer nature's call I could only see semen coming out of my anus like water from a tap, along with blood. Already I was extremely tired and weak because of the pain and the sleepless night, now I also started feeling scared after this. When I told some of the prisoners about all that happened to me there I was told to keep quiet, they said if I tell this to the police then I as well as the persons involved would be punished severely by the authorities. The news about me spread very fast, and people started teasing, harassing and laughing at me saying that I was a 'khoja', and some even refused to talk to me. But somehow through one person's help I was able to get a post card and one person who was getting released posted the letter from outside for me. In the letter, which was addressed to my brother, I had given Sangama's address and the phone number of its co-ordinator Manohar. Every day I waited eagerly and restlessly to hear my name announced over the speaker, which is done when someone comes to see a prisoner. Finally on the 10th day my brother received the letter and came to see me at 5p.m. after bribing a few policemen there. I explained to him about what had happened and then directed him to Sangama and asked him to talk to Manohar. Finally I was brought out of judicial custody on bail by Sangama's lawyer.

3.7 Concluding comments

Disturbing as these narratives are, they have yet to be picked up by mainstream human rights community in India. It is important that these narratives become part of our understanding of human suffering.

If one is to understand the nature of the violence against kothis and hijras, what emerges clearly is the all-encompassing nature of the violence, its roots in both state and civil society, the nature of surveillance by the state, and the deeply sexual nature of the violence.

Sexual violence is a constant, pervasive theme in all these narratives. Along with subjection to physical violence such as beatings and threats of disfigurement with acid bulbs, the sexuality of the hijra also becomes a target of prurient curiosity, at the very least and brutal violence as its most extreme manifestation. As the narratives indicate, the police constantly degrade hijras by asking them sexual questions, feeling up their breasts, stripping them, and in some cases raping them. With or without the element of physical violence, such actions constitute a violation of the integrity and privacy of the very sexual being of the person.

The police attitude seems to be that since kothis and hijras engage in sex work, they are not entitled to any rights of sexual citizenship.

The reason why the sexuality of hijras incites such gratuitous violence could be two-fold. First, since sexuality is often the most intimate part of a person, sexual abuse and violence can be seen as the most systematic tool of dehumanizing an individual. Second, the sexual nature of the violation can be understood as an apt punishment for a transgressive sexuality. Since this non-conformative and highly visible sexuality of hijras is so deeply threatening to the heterosexist social order, a punishment centering on a targeting of sexuality is deemed most effective.

Apart from the sexual nature of the violence, another feature of the violence against kothis and hijras is its pervasiveness as an everyday reality. No space in which the hijras move is free from violence or the threat of violence. Nothing illustrates this better than the fact that the police in Swati's case (mentioned above) intruded on the hijras' home at will. The violence itself owes something to a systemic pattern of police harassment and violence, extortion and the manifestly illegal and even criminal wrong-doing of the police.

However the pervasive and deeply sexual nature of the violence cannot be explained by reference to the police alone. Such deep violence has its roots in deeper societal structures. It is often a combination of a poor socio-economic background and a transgressive sexuality/ gender expression, the unacceptability of which is reinforced by the institutions of civil society, which sanctions such extreme forms of violence. The next section shows that it is social institutions such as the family, the media, and the medical establishment which constantly reinforce the idea that the norm is for a biological male to behave in a 'gender appropriate' manner, i.e. like a man, and thereby legitimize the violence suffered by hijras and kothis. In fact this report makes the argument that the extent and nature of violence can only be explained by playing close heed to its roots in social institutions such as the family, the law, the media and the medical establishment which constantly reinforce the idea that the norm is for a biological male to behave in a 'gender appropriate' manner. The next section will examine the institutional roots of violence.

Understanding the Institutional Basis for Violence

The scale, nature and extent of violence against hijra and kothi sex workers as documented in the previous chapter cannot be explained easily. This report seeks to argue that the violence has deep roots in both civil society and in the state. When it comes to the issue of pinning responsibility for the violence, it lies with a diverse range of institutions which are complicit in the violence. The following analysis will seek to show how the institutions of the family, the law, the medical establishment and the media through their reiteration of a discourse which is extremely intolerant to gender non-conformity are actually complicit in the pervasive violence which hijras and kothis are subject to.

4.1 The Family

The institution called the family is usually seen as a safe shelter free from violence. Most media portrays the family as a haven in which the individual finds fulfillment, love and peace. This commonsense about the family is further buttressed by international human rights law. The Universal Declaration of Human Rights, the founding document of human rights law, notes that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the state' (Article 16).

Underlying this discourse on the family is the presumption that it is an essential structure even for the protection of human rights, including the rights of liberty and dignity. However, for the hijra and kothi communities the experience of the family is frighteningly different.

The institution of the family plays a significant role in the marginalisation of hijras and kothis. The family functions within unstated, but nonetheless powerful, codes which relentlessly monitor the borders of gender and are not prepared to tolerate forms of gender non-conformity.

The following narratives illustrate the Indian family's responses to their offspring's emerging gender/sexual identity:

The institution of the family plays a significant role in the marginalisation of hijras and kothis

Testimonies

Roopa, a 30-year old hijra states: "Ever since I can remember I have always identified as a woman. I lived in Namakkal, a small town in Tamil Nadu. When I was studying in 10th standard I realized that the only way for me to be comfortable with my self was to join the hijra community. It was then that my family of mother, father, three brothers and sister found out that I frequently met hijras who lived in the city. One day when my father, a lorry driver, was away, my brother, encouraged by my mother, started beating me with a cricket bat. I locked myself in my room to escape from the beatings. My mother and brother together tried to break into the room to further beat me up. Some of my relatives intervened and brought me out of the room. I related my ordeal to an uncle of mine who gave me Rs.50 and asked me to go home. Instead, I took the money and went to live with a group of hijras in Erode.

I lived with them for three months where we earned money by dancing in various villages and towns. From there I left for Delhi. One day I was surprised to receive a letter from my parents stating that my mother was seriously ill. I rushed back only to find that she was hale and healthy. They violently beat me up and forcibly shaved my hair. They threatened to break my legs if they caught me leaving home. They made me do all the domestic work at home, work as a cleaner in my father's lorry service centre and also supply milk. After five months I could not endure any more of their constant verbal and physical harassment. I escaped and returned to Delhi.

From Delhi I left for Bombay where I lived with another hijra community and most of us earned by asking for money from shops. There I underwent the castration operation and also informed my parents about it. I came back home to Namakkal where my parents did not know how to react to my castration. They insisted that I do not wear women's attire like saris. This was not acceptable to me, and I returned to Bombay where I lived for five years doing sex-work, performing 'badhai' and collecting money from shops.

I used to visit home on a regular basis and gradually their level of acceptance increased and they allowed me to wear saris. From Bombay I moved to Bangalore in order to be closer home.

Kalyani reports that when she decided to go in for a sex change operation, at first she could not talk about it with her family. When she did reveal her plans they were so outraged that she had no choice but to run away from the family in order to carry out her plans. After her operation she heard that her father had broken his leg

and wanted to see her again. But he would see her only on the condition that she would revert to her male attire. Kalyani refused to go saying that it involved her self-respect; if her father wanted to see her, he would have to accept her as a woman dressed in a woman's clothes. It had taken her a long time to accept 'the feeling in her heart' that she was a woman, though earlier she did not have the social support or personal courage to express it openly as now.

Neera (21), who underwent a sex change operation in Dindigul, wants to leave home to do sex work but she has been told that she will then lose her share of the property. Her mother loves her but falls in line with her father's bidding on this count.

Vasavi finds that when she visits her parental family in the village she has to reassume the role of the son during her visit. Her parents do not know about her or her work. She hopes they do not find out, because she wants to continue to support them financially.

Manorama, another sex worker, put it rather starkly by noting that "When one opts to be a kothi, the family rejects us. In order to live, we have to take up sex work".

Rani, whose family is well off, says that her mother and brother have accepted her as she is but not her father; she sends home photos of herself dressed as a woman. Her family in fact would like to set her up in some business, but she is not interested.

What emerges strongly from the above narratives is that the family as a social institution polices gender non-conformity in terms of attitudes, identity, and behavior, and thereby reinforces the heterosexist regime. The narratives indicate that instead of protecting their child from the violence inflicted by the wider society the family mirrors and in fact provides an arena to act out the intolerances of the wider society. Those who violate the existing social codes which prescribe how a man is to behave are subject to daily humiliation, beatings and expulsion from the family itself.

In this context of extreme violence and intolerance, one of the few cultural and solidarity spaces available for transgenders in India is the hijra community. The narratives show that given the enormous sense of isolation faced by the hijras, particularly in close-knit communities in the villages the only solace or hope is when they get to know that there exist other people like them who live in the bigger cities. The violence inflicted by the family along with the intolerance

of a small community leads the hijra to go to a larger city in search of a community which will accept her. This in turn contributes to the formation of the hijra community as a largely urban phenomenon.

However the narratives also indicate that the attitudes of the family sometimes change to a grudging acceptance once the hijra returns home after becoming financially independent. In some cases, the return is welcome because of the hijra's ability to financially support the family, in others, the fact of the hijra now doing sex work makes the acceptance that much more difficult.

The extreme stigmatization surrounding transgressions around alternative sexuality as well as sex work makes it extremely difficult for families to accept their children. Further there are very few cultural/ social resources for families to draw on to enable them to understand the sexual and gender identity and behavior of their children. However as the above stories illustrate some family members are moving towards a grudging acceptance of their children's identities.

4.2 The Law

The law in India is a powerful force to control the hijra and kothi communities. It has criminalized the very existence of hijras and kothis, making the police an omnipresent reality in their lives. Apart from criminal laws which have invited the unwarranted authority of the police in their lives, the civil aspect of law has not heeded the demands of citizenship and equality for the hijras and kothis. In the following section, we will consider the following:

- Historical Background: The Criminal Tribes Act, 1871
- Section 377 of the Indian Penal Code
- Immoral Trafficking Prevention Act, 1986
- Civil Laws

4.2.1 Historical Background: The Criminal Tribes Act, 1871

The roots of contemporary violence against the hijra community can in fact be traced back to the historical form that modern law in colonial India has taken. It took the form of the enactment of the Criminal Tribes Act, 1871, which was an extraordinary legislation that even departed from the principles on which the Indian Penal Code was based. To establish an offence under the Indian Penal Code, the accusation against the accused has to be proved beyond reasonable

doubt in a court of law. However, the British seemed to feel that this system of 'civilized jurisprudence' was totally inadequate for dealing with certain tribes and communities who were 'addicted to the systematic commission of non-bailable offences'. These communities and tribes were perceived to be criminals by birth, with criminality being passed on from generation to generation. It fitted in well with the hierarchical Indian social order, in which some communities were perceived as unclean and polluted from birth. The idea of a criminal tribe was based on the notion that 'crime as a profession passed on from one generation of criminal caste to another: like a carpenter would pass on his trade to the next generation, hereditary criminal caste members would pass on this profession to their offspring'.

Once a tribe was notified as a criminal tribe, all members of the tribe including women and children, would have to register with the specified authority, with non-registration rendering the person liable to prosecution. Once the member of the tribe was registered, he or she was liable to be punished with imprisonment of up to three years if he was found in a place or in such circumstances as to satisfy the Court that he was waiting for an opportunity to commit theft or robbery. Further the registered person's movement was restricted to the limits prescribed by the authority and any movement outside this authorised area meant that he could be arrested. There were more regulations framed under the rules the violation of which subjected the registered person to more penalties ranging from fines to imprisonment. All these provisions were violative of basic freedoms given to more deserving colonial subjects. Moreover, the criminal tribes had to contend with the police as an ever-present and daily threat to their very existence.

The linking of the criminal tribes to sexual non-conformity was due to the perception on the part of the colonial administration that the itinerant communities had a licentious lifestyle. The itinerant communities comprised entertainers such as acrobats, singers, dancers, tightrope walkers, and fortune-tellers, who were perceived as a threat to the order of sedentary societies. As Meena Radhakrishna notes, "...the nomads' lack of property, and supposed lack of due regard for others' property, is seen to be a threat to the established order, and their independence from rigid norms and constraints of sedentary societies is found highly objectionable. In fact, itinerancy is seen as a possible escape route for the so-called outcastes and refuse of sedentary societies... In addition, for the keepers of social morality, [their] lack of visible social institutions implied complete disorder in their community life. Their lack of written codes of conduct, and absence of articulated norms of morality implied absolute licentiousness".

The link between criminality and sexual non-conformity was made more explicit in the 1897 Amendment to the *Criminal Tribes Act of 1871*, which was sub-titled '*An Act for the Registration of Criminal Tribes and Eunuchs*'. Under the provisions of this statute, a eunuch was 'deemed to include all members of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent'. The local government was required to keep a register of the names and residences of all eunuchs who are 'reasonably suspected of kidnapping or castrating children or of committing offences under Section 377 of the *Indian Penal Code*'. Any eunuch so registered who appeared 'dressed or ornamented like a woman in a public street....or who dances or plays music or takes part in any public exhibition, in a public street....[could] be arrested without warrant and punished with imprisonment of up to two years or with a fine or both'. If the eunuch so registered had in his charge a boy under the age of 16 years within his control or residing in his house, he could be punished with imprisonment of up to two years or fine or both. A eunuch was considered incapable of acting as guardian, making a gift, drawing up a will or adopting a son. A phrase used by a British officer for the criminal tribes is equally appropriate to describe the colonial perception of the eunuchs: '...they are absolutely the scum, the flotsam and the jetsam of Indian life, of no more regard than the beasts of the field'.

The sexual non-conformity of the eunuch thus earned severe strictures and penalties from the colonial administration. Being a eunuch was itself a criminal enterprise, with surveillance being the everyday reality. The surveillance mechanism criminalised the quotidian reality of a eunuch's existence by making its manifest sign, i.e. cross-dressing a criminal offence. Further, the ways in which eunuchs earned their livelihood, i.e. singing and dancing, were criminalised. Thus, every aspect of the eunuch's existence was subject to surveillance, premised on the threat of criminal action. The police thus became an overt and overwhelming presence in the lives of eunuchs. Further, the very concept of personhood of eunuchs was done away with through disentitling them from basic rights such as making a gift or adopting a son. Although some research work has been done on the former criminal tribes, no research has been done on the way the colonial regime drew on existing prejudices to disentitle and marginalize the eunuchs of colonial India. However, one can speculate that much of what could be said about the condition of the criminal tribes applied equally to the eunuchs. The role of the police in inflicting violence through and outside the law governed their lives as much as it governed the lives of the former criminal tribes. However, striking as the similarities are, it is important to note that, because of the

stigmatised nature of their sexuality, the eunuchs never found a voice in nationalist or subaltern histories.

Even the criminal tribes, hard as their lot was, had some voices of support in the nationalist movement. Jawaharlal Nehru, for example, noted that "...I am aware of the monstrous provisions of the Criminal Tribes Act which constitute a negation of civil liberty...an attempt should be made to have the Act removed from the statute book. No tribe can be classed as criminal as such and the whole principle is out of consonance with all civilized principles of criminal justice and treatment of offenders". However, such was not the case of the eunuchs, who were completely marginalised in all discourses save the discourse of criminal law, in which their sexuality and gender identity were conceptualised as a state of criminality, and the discourse of civil law, in which they emerged as subjects without even the limited rights of other colonial subjects.

What is important about this historical background is that the contemporary perception of hijras as thieves as well as the brutal violence which is inflicted against them can be traced back to this colonial legislation which stands repealed today in theory but continues to exist as part of the living culture of Indian law.

4.2.2 *Sec 377 of the Indian Penal Code*

Sec 377 of the 1860 Code was drafted by Lord Macaulay. It comes under the Section titled 'Offences Affecting the Human Body' and follows the section on the offence of rape. It is not clear in what way the offence defined under Sec 377 is an offence against the human body. Its jurisprudential basis is rather the conceptualisation of a specific morality of gender and sexual conformity and the need to enforce such a morality on the Indian subjects.

Sec 377 of the *IPC* reads:

Unnatural offences - Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

This provision provides the sanction for the prosecution of certain kinds of sexual acts deemed to be unnatural. It is important to note that regardless of

consent these sexual acts are liable for prosecution provided they are seen as carnal intercourse against the order of nature, with man, woman, or animal and, thus satisfy the requirement of penetration. To understand the nature and scope of Sec 377 one would have to study the judicial decisions under Sec 377. An analysis reveals that carnal intercourse against the order of nature is conceptualized to include oral sex, anal sex and even thigh sex, thereby broadening the meaning of penetration beyond penile-anal penetration. Basically any form of sex which does not result in procreation comes within the rubric of Sec 377.

Section 377 might not seem to be a very dangerous provision in the context of hijras or kothis if the acts were considered to be acts which all human beings engaged in. However due to the nature of the homophobic discourse, these acts are specifically located in the bodies of queer people. To be a homosexual or a hijra is to draw the presumption that the hijra or the homosexual is engaging in 'carnal intercourse against the order of nature'.

This particular interpretation of Sec 377 means that all queer people, particularly the kothi and hijra sex worker population are particularly vulnerable to harassment under this provision. Going by the nature of availability of space, most often it is these marginalised populations who engage in the sexual activity proscribed under Sec 377 in public areas such as parks and public toilets and hence end up being vulnerable to arrest.

In *Queen Empress v. Khairati* (ILR 6 All 205), the police suspected the victim of being a eunuch who dressed in women's clothes and on occasions was found dancing and singing with women, and arrested him under Sec 377. The Court observed that the accused was a regular sodomite, due to the medical reports which showed a distortion of his anal orifice as well as his feminine behaviour. While the Court acquitted the victim, the entire process of investigation and trial ends up stigmatizing Khairati through an invasive process only on the basis of her gender non-conformative behaviour and identity.

However the use of Sec 377 is still not fully documented as it could be used in many cases which might not have even reached the trial court, for various reasons ranging from their being decided at the level of the police station, to many that might not have been appealed. Thus only a few cases finally reach the High Court and the Supreme Court.

It is important to note that there are no Indian laws that specifically criminalise child sex abuse, so Sec 377 has been used in prosecuting cases where

anal and/or oral intercourse with children was involved. In a study of forty-six judgements under Sec 377 of the IPC it came to light that thirty cases (more than 60%) deal with child sexual abuse. Out of these twenty cases involved abuse of a male child by a man and ten involved abuse of a female child by a man. (See *Humjinsi*, 2002, p.71). However there are serious limitations in the use of Sec 377 to address issues of child sexual abuse, as the focus of Sec 377 on 'carnal intercourse against the order of nature' leaves out serious cases of child sexual abuse where penetration does not occur. Child sexual abuse as a human rights abuse cannot be confined to the limits imposed by Sec 377 and needs a separate law to deal with it. The law would have to take into account the possibilities of abuse of positions of authority be it in the family or school. It would also have to take into account child sexual abuse as a continuing abuse of authority as opposed to a single act. And finally it will have to move away from the judicial preoccupation with penetration and look more closely at the abuse of relationships of trust and authority for sexual favours. Further, the idea of using a colonial law which infringes deeply on the core of individual freedom to protect children from sexual abuse needs to be seriously questioned.

The case law indicates that Sec 377 has not been used to prosecute cases of consensual sex extensively. However this does not limit its significant role in perpetuating a certain kind of discourse about queer people which classifies certain social groups as criminal and stigmatizes their sexual behaviour. It's extraordinary that though one reading of Sec 377 is that it expressly excludes lesbianism by virtue of the 'Explanation - requiring sufficient penetration necessary to constitute the offence', it has been read expansively by State authorities to harass and intimidate lesbian women as well. The discourse which constructed queer people as 'unnatural' and 'perverted' therefore has the effect of legitimising violence against all queer people. Further the law has the effect of practically shutting out any further talk of queer rights as all actors rely on the criminality of sodomy to legitimise discrimination against queer people.

4.2.3 *Immoral Trafficking Prevention Act, 1986*

The chief instrument of the Indian state's regulation of prostitution is Immoral Traffic Prevention Act of 1956 (amended in 1986), whose mandate is to prevent the traffic of women and children into prostitution. According to Sec 5(f) of the original Act of 1956, the volitional act of 'A female offering her body for promiscuous sexual intercourse for hire whether in money or kind', is liable for prosecution. Under Sec 5(f) of the amended Act of 1986, there is a shift of focus

from commercial sex undertaken voluntarily to 'the sexual exploitation or abuse of persons'. The stated objective of the law on trafficking is not to criminalise prostitution *per se* but to criminalise brothel keeping, trafficking, pimping and soliciting. In actuality, the enforcement of ITPA invariably targets the visible figure of the sex worker (who is also the weakest link in the chain) and generally spares the hidden and powerful system that supports the institution of sex work. Thus the operational parts of the ITPA are Sections 7 and 8 which deal respectively with prostitution in public places and soliciting. In fact the majority of arrests of the sex worker take place under Sec 8, which defines the offence of soliciting for purpose of prostitution. This definition makes it clear that under Indian law sex workers may, so to speak, exist but not be seen: sex work is allowed to exist as 'a necessary evil' because it serves a male sexual need, but its practice has to be continually hedged around with legal strictures, police harassment and intimidation.

In modern Indian society, the State and its apparatuses — the police, judges, lawmakers — as well as social reformers have attempted with single-minded zeal to put down sex trafficking and rehabilitate sex workers but in ways that violate their fundamental civil, economic, social and sexual rights, and expose them to organised violence, public stigma and discrimination.

The ITPA has so far been analyzed as applying to women in prostitution, proceeding on the assumption that it is women who are targeted by the ITPA. The original Act of 1956 was entitled 'Suppression in Immoral Trafficking in Women and Girls Act'. Section 2(f) defined prostitution as 'A female offering her body for promiscuous sexual intercourse for hire whether in money or kind'. This Act, in all its provisions, specifically targeted the female gender. However with the 1986 amendment, the title was modified to 'Immoral Traffic Prevention Act', and it became gender neutral. The words 'female' and 'girls' were substituted by the word 'person' throughout the Act (Sec (f), Sec 2(aa), Sec (ca), Sec (cb)). However the change in the law has not resulted in any change in the ground level since kothis sex workers are hardly ever arrested under ITPA, but are instead picked up under provisions of the Indian Penal Code relating to theft and extortion.

The ambit of the Act now applied to both male and female sex workers and possibly also to those whose gender identity was indeterminate. It is with the 1986 amendment that both male and hijra sex workers became criminal subjects of the ITPA. This provided the legal basis for arrest and intimidation of the transgender sex worker population.

Thus, under ITPA, all sex workers, male, female, and hijra face state violence and public stigma and discrimination. On grounds of preventing immoral trafficking and protecting public order and decency, the police exclusively target people in prostitution instead of the institution of prostitution, including brothel keepers and clients. Often the police proceed against the sex workers without any evidence of solicitation (as is required under Section 8 of ITPA) and merely on the suspicion that they are prostitutes. This produces an underclass of permanently targeted people who, at any time, are liable to be assaulted in public merely because they happen to be there, taken away to the police station, wrongfully confined and restrained, subjected to humiliating treatment, and their earnings taken away. Sometimes, false cases are lodged against them which serves the double purpose of 'solving' an existing case and keeping the sex workers off the street.

4.2.4 Civil Laws

As per the Constitution most of the protections under the Fundamental Rights Chapter are available to all persons with some rights being restricted to only citizens. Beyond this categorization the Constitution makes no further distinction between rights holders. However this *de jure* position is not reflected in the various laws governing the civil conduct of human beings.

Nowhere is this more apparent than in the treatment of marginalised categories such as transgender sex workers. If one takes the position of hijras and kothis, it is clear that gender non-conformity does make a difference to one's ability to access basic civil rights otherwise available to all other citizens.

Official identity papers provide civil personhood. Among the instruments by which the Indian state defines civil personhood, identity based on sex is a crucial and unavoidable category. These identification documents like a birth certificate, passport or ration card are a predicate for the ability to enter into a variety of relationships in civil and official society — for obtaining driver's licenses, for accessing legal service, employment opportunities, university admissions, and essential benefits including health care.

Identification on the basis of sex within the binaries of male and female is thus a crucial component of civil identity as required by the Indian state. The Indian state's policy of recognizing only two sexes and refusing to recognize hijras as women, or as a third sex (if a hijra wants it), has deprived them, at a stroke, of several rights that Indian citizens take for granted. These rights include the right

to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health, and so on (nevertheless, some hijras through personal effort have managed to obtain a ration card, a driving license or a passport by declaring themselves as women). Such deprivation secludes hijras from the very fabric of Indian civil society.

In north India there are instances of hijras standing for election and winning elections as MLA, Mayors and Councillors. These elections however become vulnerable to legal challenge precisely because of the difference between the sex at birth (male) and the assumed gender identity (female). Thus in another recent case affecting the queer community, the Madhya Pradesh High Court upheld the order of an election tribunal which nullified the election of a hijra, Kamala Jaan, to the post of Mayor of Katni on the ground that it was a seat reserved for women and that Kamala, being a 'male' was hence not entitled to contest the seat. Similarly the election of Asha Rani the mayor of Gorakhpur was annulled by the court on the ground that she was not biologically female. These decisions essentially imply that one cannot choose one's sex and that one should remain within the sex into which one is born.

What is important to note is that both gender and sex are regulated by law. A person, once born into one sex, is legally forced to live within the same sex. Sex changes are not yet legally recognized in India. Thus the binary classification of gender into male and female which does not recognize a third gender category makes the transgender status of hijras a legal nonentity. The rigidity of the law is further exemplified in the fixing of sex at birth as the sex for all subsequent legal transactions. Thus a hijra who wishes to claim her legal sex as female while being born a male is unable to do so.

In a cruel paradox, while the transgender identity of hijras poses no problems to the operation of criminal law and its role in criminalising hijra existence itself, the transgender identity becomes a stumbling block as far as accessing rights under civil law are concerned.

4.3 The Medical establishment

The medical establishment has played a key role in creating a culture of intolerance towards hijras and kothis. The medical establishment is particularly significant in the lives of hijras and kothis both with respect to their ability to access treatment without being subject to discrimination and with respect to their constructing a

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self and identity for themselves. When hijras want to transit to another sex or gender, the role of the medical profession in facilitating this process is crucial. The medical discourse has in fact classified this need to 'transit' as a Gender Identity Disorder (GID).

According to the two main diagnostic systems, ICD 10 and DSM IV, transsexualism is a Gender Identity Disorder in which there is a strong and ongoing cross-gender identification, and a desire to live and be accepted as a member of the other sex. The transgender individual experiences a persistent discomfort with his or her anatomical sex and a sense of inappropriateness in the gender role of that sex. According to the *Oxford Companion To Medicine*, '...transsexualism is characterised by a passionate life-long conviction that one's psychological gender, that indefinable feeling of maleness or femaleness, is opposite to one's anatomical sex...'. There is a wish to have hormonal treatment and surgery to make one's body as congruent as possible with one's psychological sex. The objective of treatment is to harmonize the psychological sex with the physical sex.

Once GID is confirmed, one of the treatment options is sexual reassignment surgery (SRS, see Annexure XI). In SRS there is no single model of treatment. Rather, variety in approach is both supported and sought as part of the continuing professional discussion of the syndrome. The currently accepted and effective model of treatment utilises hormone therapy and surgical reconstruction and may include electrolysis, speech therapy, and counselling and other psychotherapeutic treatments. The surgical reconstruction itself could include construction of a vagina, removal of the penis, testes, construction of clitoris etc. According to a report in *Hindustan Times* (Dec. 20, 2002), the plastic surgery department in *Lok Nayak J.P. Narain Hospital* in New Delhi, recently successfully performed SRS for a 27-year old transsexual Ranjan — one of the several that this hospital has performed in the last couple of years. The surgery, which was a complicated one lasting seven hours, was done free, which in a private hospital would have cost up to Rs. 15 lakh. According to Dr. Rajeev Ahuja, who performed the surgery, every year about a dozen transsexuals approach him for this operation. Such surgeries have similarly been performed in Kerala.

However the accessibility of SRS among the hijra population in general is limited. As Dr. C. Venkatesan, a physician from Chennai notes, "While educated and wealthy 'male-to-female transsexuals' may have access to surgeons and plastic surgeons, many hijras are from a low socio-economic status and hence might not be able to afford sex reassignment surgery. Further SRS is not done in government

hospitals; private qualified practitioners (general/ plastic surgeons) also don't do SRS. Some do SRS but charge heavily. Consequently, many hijras go to unqualified medical practitioners ('quacks') who do castration".

But the so-called simple castration that many hijras undergo at the hands of 'quack doctors' or senior hijras (called 'Thai Amma') has significant health risks. As the first *PUCL-K* Report observes: "Often such operations are undertaken by poorly qualified doctors in hazardous and unsanitary conditions. When Manorama and her two friends decided to have the operation, they found that they did not have enough money for it and had to do sex work for a while to earn the amount. A fellow hijra took them, on payment of a commission, to a doctor in Dindigul who was known to do such operations for a fee of Rs. 5000, which did not include nursing care. The doctor's clinic was a tiny airless room with a toilet consisting of three benches, which served as an operation table. The operation was so painful that Manorama wondered whether it was worth going through the pain in order to become a hijra. The operation turned out to be defective leading to a severe infection, loss of urine control and other painful complications. The operation was not followed by a urine and blood check up. Since the operation was defective they have had to keep visiting other doctors to deal with the infections resulting from the operation".

This kind of risk is not just limited to a few cases but is a pervasive part of the hijra's interface with the medical establishment. As Dr. C Venkatesan notes, "The risks involved in traditional castration practice include death due to neurogenic shock or hypovolemic shock or due to the wound becoming septic". Even if death is not the eventuality, many hijras mentioned, according to Dr. Venkatesan, "...urine problem following the operation" (urinary stenosis/ stricture following emasculation by Thai Amma or quacks) as the main health problem faced by their community.

The problem of access to hygienic, professional and affordable medical treatment is exacerbated by the legal position on SRS and castration. The law in India does not contemplate the phenomenon of transsexuality at all. In fact under Section 320 of the Indian Penal Code (IPC), 'emasculating' (castrating) someone is causing him 'grievous hurt' for which one can be punished under Sec 325 of the IPC. Thus technically speaking even if one voluntarily (with consent) chooses to be emasculated, the doctor is liable for punishment under this provision and the person undergoing the emasculation could also be punished for 'abetting' this offence. However under Sec 88 of the IPC an exception is made in case an

action is undertaken in good faith and the person gives consent to suffer that harm. The section reads: "Nothing which is not intended to cause death is an offence by reason of any harm which it may cause or be intended by the doer to cause to any person for whose benefit it is done in good faith, and who has given a consent...to suffer that harm, or to take the risk of that harm."

In actuality, however, the legal process is set in motion by someone filing either an FIR in the concerned police station or by filing a private complaint. This does not happen in the case of SRS/ castration as both the doctor and patient are consenting parties to the transaction, and it is extremely unlikely that they will activate the criminal law process. Thus there is no documented case in India of doctors and patients having been prosecuted for causing grievous hurt or abetting the causing of grievous hurt through SRS. In the unlikely case that such a process is activated, a qualified doctor who does the SRS would be protected by the general exception under Section 88 of the IPC.

However the lack of clarity about the law has had its impact on the medical establishment. Hijras are unable to legally access safe and sanitised medical facilities for castration. The few hijras who can find the resources and a willing doctor manage to obtain a surgery-like castration which however is performed in highly surreptitious circumstances, leaving little space for quality, efficiency, and accountability.

SRS is available in India but very surreptitiously. Doctors in India get transsexuals and hijras to sign consent forms stating that they have cancer-related complications and thus need the required surgery. Dr. Venkatesan observes: "Previously 'neo-vagina' creation (creating a vagina-like path in an emasculated person) was being done in the Government General Hospital in Chennai. But nowadays, it is not being done because of lack of interest and expertise in Urology/ Plastic surgery department of the hospital and also because of the ambiguous legal status of SRS".

Apart from the 'grievous hurt' provisions in IPC, doctors are also worried about the validity of the consent which the patient gives to the SRS process. In the unlikely eventuality of a case being filed against a doctor the general exception under Sec 88 only comes into play if there is valid consent. In the case of a transsexual, this consent clause could be challenged since the transsexual is diagnosed as suffering from GID which is classified as a psychiatric disorder.

Further if the person is a child, the absence of support from parents or legal guardians can mean that treatment itself becomes an unviable option.

Even the Indian Medical Council (IMC) and Indian Council for Medical Research (ICMR) have not really responded to the issue of transexualism. SRS is a highly complex surgery that requires strict protocols and guidelines to be followed. However, neither the ICMR nor the IMC have formulated any codes or guidelines and this lack in India is producing various ad hoc and incomplete responses. For example, counselling constitutes an important component of the whole surgery, which is often never made available to transgender people.

Thus if one were to summarize the interface of the medical establishment with hijras, it's clear that SRS is very expensive and therefore very difficult to access, making it almost a luxury and beyond the reach of a common person. However it is available at select hospitals (for details see, http://www.geocities.com/pri_29_2000/indianbeauty1-6.html). Hence hijras fall back on those who are willing to operate under conditions which endanger the health and even the life of the hijra person.

In this context the first responsibility of both the state and the judiciary is to decriminalise 'voluntary emasculation' and set legal and ethical protocols for performance of SRS and castration facilities in order to avoid any incomplete and ad hoc responses. A clear strategy that seeks decriminalisation and legalisation needs to be evolved to make these surgeries comprehensive, efficient, accessible and affordable.

Dr. Venkatesan observes: "Many hijras want SRS to be done freely in government hospitals. Also, many want mammoplasty, vaginoplasty as well as procedures for facial hair removal, scalp hair growth and changing their voice. Many hijras take hormonal tablets/ injections since hormonal therapy is not offered by government or private doctors".

The non-availability of these facilities combined with the hazards and risks listed above mean that the medical establishment produces the effect of reinforcing the low sense of self-worth that hijras in general feel. In fact due to this low sense of self-worth and due to non-acceptance by their families, many hijras we met had thought about or attempted suicide. The shabby treatment that the hijra receives at the hands of the medical establishment ends up eroding the hijra's sense of self instead of nourishing it.

4.4 The Media

The media is a powerful site through which opinions, identities and selves are constituted. The images and representations of the media become a part of a common cultural memory as well as mould our very ways of thinking about issues. In the contemporary world, media images are ubiquitous and play a powerful role in conditioning the way we think about the world.

The prejudices and feelings that most people entertain about the transgender people are shaped in very powerful ways by the media which can either reinforce stereotypical ideas or question the way events and people are represented. With respect to the representation of transgender people, one notices that the media largely mirrors and even constitutes the common prejudices about the transgender community in India. It is a powerful source through which intolerance against queer people is insistently reiterated and thereby legitimised.

The representation of kothis, hijras, homosexuals and transgender sex workers in the media constructs the filters through which these marginalised communities are perceived and hence treated. In reporting about kothis, hijras, and transgender sex workers, the local media (both English and Kannada) follows the heterosexist logic of seeing them as lurid, sleazy, and evil. What follows is a content analysis of a number of recent news stories that reveal underlying attitudes of popular media towards transgender people. In the next section we will examine how this representation is undergoing some changes under the pressure of organizing by the queer community.

4.4.1 Arrest of transgender sex workers on charges of theft and robbery

On 5 July 2002, the police of Upparpet station arrested four male sex workers in the city on charges of robbery and theft. Stolen property (jewellery, cash, and electronic goods) worth Rs. 3 lakh was alleged to have been recovered from them. The police accused them of waylaying people in Majestic and Cubbon Park and taking them to hotels where they were robbed and coerced into sex and then blackmailed. The police booked 20 cases of theft and robbery against these four male sex workers and illegally detained them in the Upparpet Police station for more than twenty five days, and had not filed charge sheets against them even after six months.

This case was widely reported in the English newspapers (*Deccan Herald*, *The Hindu* and *Times of India*) as well as in Kannada newspapers (*Prajavani*,

Vijaya Karnataka, and *Kannada Prabha*). But the reports were quite sketchy and depended exclusively on the police files and did not attempt to get the version of the accused. More important, all the reports (with the exception of *Times of India*) uniformly link the criminal offences to the sexual orientation of the accused: "Four gays involved in dacoities held" (*Deccan Herald*); "...the accused are said to be homosexuals" (*The Hindu*); "Robbery: Homosexuals arrested" (*The New Indian Express*).

The suggestion is that persons exhibiting homosexual behaviour are naturally, and more likely than others, drawn towards criminality; from here it is only a step towards constructing homosexuality itself as a form of crime. This equation of crime and homosexuality is quite common in police accounts of activities of sexuality minorities, especially of hijras. In fact, the Bangalore police have gone a step further and are officially resorting to criminal profiling of hijras alleging that all of them were doing sex work in order to solicit customers and rob them later.

Thus, a report in *Vijaya Karnataka* writes of Police Commissioner Sangliana directing hijras in the city to come to his office, taking their photographs and fingerprints, and warning them against engaging in homosexual activities, criminal activities, and prostitution. Such blanket condemnation and targeting of an entire community as prone to criminality is a throwback to the colonial categorisation of so-called 'criminal' tribes. What is unfortunate is the tendency in the media to uncritically accept and publish, without cross-checking with other sources, highly biased and sensational accounts put out by the police. When *PUCL-K* protested against such police-inspired reports, *Indian Express* did publish a correctional write-up the next day, but the other newspapers ignored it.

4.4.2 The Chandini Case

On 1 December, 2002, Chandini, a hijra, died of severe burns in her home in Kammanahalli, Bangalore. She had been married to Jnanaprakash, a painter, who claims that he was unaware of Chandini's gender identity till the day before her death; his reaction of shock and outrage as well as his threat to expose her to his parents drove her to commit suicide. But many hijras who know Chandini discount the suicide story completely and allege that Jnanaprakash, who met Chandini in a hamam, had a long-standing relationship with her. In fact, *Sangama* has a videotape of a hijra function showing Jnanaprakash with Chandini and many other hijras. These hijras accused Jnanaprakash of murdering Chandini for her money and jewellery. Along with members of the collective 'Vividha',

they staged a demonstration on 7 December, 2002, and demanded that Chandini's death should be treated as a murder case and an impartial probe should be conducted. But the police have turned down these demands and have stuck to their version of the death as suicide.

On 4 December, 2002, major English and Kannada newspapers reported the sensational news of Chandini's death as a suicide, basing their report, as usual, entirely on the police version. It was only later that the hijras' allegation that her death was in fact a murder was published in the newspapers as part of the coverage of the hijra rally on 8 December, 2002. Two popular Kannada weeklies, *Police News* and *Lankesh Patrike*, published two long exposés, one sleazier than the other. The story in *Police News* (22 December 2002) starts off as an exciting heterosexual romantic tryst between two strangers that turns into a sordid nightmare of an unsuspecting young man trapped into marriage by a wily hijra whose sexual identity is revealed only after the marriage. Here, as elsewhere in society, Chandini's sexual and cross-gender identity is seen not as choice but as a deception, a trick to lure innocent men with. Inverting the process of becoming a hijra (a biological male taking on the gender role of the female), the story portrays Chandini as an attractive young woman till her dark secret is revealed and is represented by the writer thereafter as a male imposter — 'Chandini alias Nazir'. Suicide by Chandini is seen as the only possible way out of an impossible marriage. This is reinforced by a gruesome photograph of Chandini's charred body. This melodrama of intrigue, exposure and catastrophe is presented entirely from the husband's point of view as the narrative focuses on Jnanaprakash's frustrations, deflecting attention from the traumatic death by burning of Chandini. The main article underwrites the police version of the death as a suicide, while the hijras' allegation that the death was not a suicide but a murder is reported briefly under a separate box item; it is suggested that the hijras are trying to put undue pressure on the police to launch further investigations. In fact the police are under an obligation to treat the wife's death by burning as an unnatural death requiring further investigation. So far the police have refused to conduct this investigation.

The article in *Lankesh Patrike* by R. Somnath (18 December 2002) repeats many of the characterizations of the Chandini case in *Police News*. Thus it supports the police version of the death as suicide and sees the hijras' demand for an impartial probe not as an expression of protest but as unwarranted intimidation, preventing the police from doing their job. Again, the hijra community is represented as trapping males into marriage as well as others who are unsure of

their gender orientation into undergoing sex change operations. But the *Lankesh Patrike* article goes much further and sets up the hijras as a race apart, freaks of the underworld, half-man half-woman, almost devilish in their customs and practices (the Kannada word 'anthara pishachi', used in the article, signifies a ghost, animal or man, in anguish for want of habitation, condemned to eternal wandering, like a wandering Jew). *Sangama* wrote a spirited rejoinder to this article pointing out that the article's lurid stigmatisation throws light not so much on transgenders but on the writer's own homophobia and transphobia, his confusion and ignorance about transgender identity (referring to them alternately in the masculine and feminine genders), and a rigid sexual morality.

As in much regional media, the article freely uses a variety of derogatory epithets to describe sexuality minorities such as 'khoja', 'chakka', 'gandu' (homosexual), 'napumsaka' (eunuch), and so on. The commonly used word 'eunuch' merits special mention here. It is based on an antiquated and patriarchal notion of gender and sexual identity that stems entirely from masculinity and sexual potency as the norm. Given such a notion, the sex reassignment surgery undergone by hijras to embrace a female identity appears as grotesque emasculation. Again, the writer describes with fascinated revulsion many marriages in which the man lives off the earnings of his hijra partner as if such sexual exploitation is peculiar to the hijra community and not representative of many heterosexual marriages as well. Basically, the article betrays the writer's inability to accept the complex reality of relationships and identities among sexuality minorities that do not conform to the regime of heterosexist and patriarchal morality. It is ironical that such a vicious article which depends on the police version should be published in a supposedly progressive and anti-establishment publication like *Lankesh Patrike*. It seems that when it comes to sexual minorities, the media, despite repeated exposure to this issue and its own emerging predilections, remains in the grip of gender stereotypes and the heterosexist ideology.

Organising by Kothi and Hijra Sex Workers in Bangalore

As a result of interventions by a number of queer rights groups the kothi and hijra community has been spurred into mobilising against discrimination by both the state and society. In this section, we will look at a number of strategies employed by hijra and kothi sex workers in Bangalore to organise themselves. These strategies are:

- Formation of a collective by the hijra/ kothi community
- Crisis intervention in cases of violence
- Media visibilisation

5.1 Formation of a collective by the kothi/ hijra sex worker community and poor/ non-English speaking sexuality minorities

One of the significant moments of kothi, hijra, and male sex workers' organising has to do with *Sangama's* evolution as an organisation working for the rights of sexuality minorities. Initially, *Sangama* kept a low profile, confining its activities to providing documentation support for researchers on sexuality issues as well as offering counselling services to sexuality minorities. It also arranged regular film screenings and lectures/ discussions in order to create a public discourse on sexuality minorities in Bangalore. Yet *Sangama's* support base was initially drawn from social activists and sexuality minorities from English-speaking backgrounds, and they hardly had any contacts with kothis, hijras, and transgender sex workers.

But the situation changed as *Sangama* and other support groups of sexuality minorities came to realise that organising sexuality minorities for their rights could not be achieved without bringing in issues of gender, caste, class and language backgrounds and other internal differences among them. Accordingly, attention began to focus on the problems and special challenges faced by sexuality minorities from economically and culturally underprivileged sections of society, especially kothis, transgenders, and hijra sex workers.

The first attempt at mobilisation took place when a few kothis and hijras who had been in touch with *Sangama* for some time took the initiative in forming '*Suchasbraya*' for non-English

As a result of interventions by a number of queer rights groups, the kothi and hijra community has been spurred into mobilising against discrimination by both the state and society.

speaking sexuality minorities. This small group used to meet at *Sangama's* office for a while until June 2000 when the police arrested a kothi on trumped-up charges of theft and kept him for eight days in Upparpet police station lock-up in illegal custody. The police seized his diary to collect information about the whereabouts of kothis in Bangalore and went on one of their usual 'clean-up drives', in other words, assaulting sexuality minorities, illegally detaining them, and extorting money from them and so on. The police campaign sent shock waves through the sexuality minority community in Bangalore, and led to the precipitate closure of '*Snehashraya*', as its members, fearing arrest, stayed away from *Sangama*, which had also briefly come under police surveillance. The police action was an object lesson for sexuality minorities in Bangalore: in the absence of an effective mechanism for crisis intervention, it was easy for the police, with a few selective actions, to shut down an emerging movement.

Despite this initial setback, several kothis, hijras, and transgenders persisted in their mobilisation efforts which achieved a major breakthrough when *Sangama* started in February 2002 a Sunday drop-in center for sexuality minorities from the poor and non-English speaking backgrounds. There were over forty people in the first meeting, more than half of whom were male sex workers, and there has been similar participation in the other Sunday meetings. Most of the people participating in these meetings identified themselves as kothis or double-deckers, while others identified themselves as bisexuals or hijras. Generally, around five to ten participants in these meetings are Muslims and some of them don't understand Kannada well; one or two participants are from north India. Hence most of these meetings are conducted in Kannada and Hindi/ Urdu. The Sunday drop-in center initially was just a space where they could meet others like themselves, and share their feelings and problems. Gradually, the group learned to look more directly at the issue of oppression they were facing from the police and society, to understand its causes, and eventually to develop a consciousness of their rights as sexuality minorities.

The groundwork for this mobilisation had been laid earlier when *Sangama* launched two outreach projects for homosexual/ bisexual males and kothis as well as for hijras and kothis under which five trained fieldworkers would contact sexuality minorities in parks and cruising areas, listen to their problems, and intercede on their behalf with the police when necessary. The outreach projects were successful in establishing contacts with a large number of kothis and hijras who started to visit *Sangama* regularly (about ten on an average on a daily basis) to seek legal advice, counselling and other forms of assistance. *Sangama* in the

meanwhile had shifted its office to a more convenient location near Shivaji Nagar Bus Station having direct city buses from anywhere in Bangalore. Besides, *Sangama* was close to cruising areas in the city as well as to police stations involved in the harassment of sexuality minorities, and this enabled the organisation to intervene in crisis situations. It also started providing legal aid through lawyer friends who provided free legal services to homosexuals, bisexuals, kothi and hijra sex workers, and lesbian women, especially when they are arrested by the police, and negotiating with their families and providing other forms of support.

Another factor that helped in the mobilisation process was the concern expressed repeatedly in the Sunday group meetings by kothi and hijra sex workers that they face extreme harassment and abuse from the police. Hence it was important to link the movement for sexuality minorities rights with the discourse of the sex workers' movement. This entailed working with groups involved in women sex workers' rights, such as *DISC*, *Vimochana*, *Samraksha*, *Nele*, *ALF*, and *DMC*. Representatives of these groups as well as from *Sangama* met Sri. S. M. Krishna, the Chief Minister of Karnataka, in August 2002 in order to submit a memorandum against police violence on sex workers in Karnataka. In order to address issues of sex work and to visibilise sex workers' concerns within other social movements, these groups have formed a 'Forum for Sex Workers' Rights' in Bangalore which is currently involved in campaigns against laws criminalising sex workers such as *ITPA*. One of the major activities of the 'Forum for Sex Workers' Rights' was a public protest on 28 June 2002 in front of Town Hall in which kothi and hijra sex workers took part along with female sex workers. This was followed by a two-day workshop for sex workers which was attended by sex workers from the four states of south India, who also subsequently participated in the weekly Sunday group meeting.

However, in the context of mobilization of sex workers, we need to differentiate between hamam-based and non-hamam based hijra/ transgender people, for while street-based kothi and hijra sex workers have enthusiastically joined the burgeoning sex workers movement, hijras and kothis living in hamams are not as willing to identify with sex-workers' collectives (mostly comprising street-based women sex workers). This is because these sex workers have fears of being targeted by the police, though some of them did participate in the Town Hall meeting. The hamam-based hijra community of Bangalore has only recently begun to interact with *Vividha*. Reaching out to them has been difficult as they are quite wary of outside intervention. Visiting hamams and beginning to work with them has been a slow process largely due to the fact that marginalised as

they are, they have evolved their own ways to deal with the transphobic society and the state, and also partly due to the formalised structure that exists in hamams. *Sangama* has been slowly developing its contacts with the many hamams in Bangalore, and they hope to increase their interactions with them over the next six months through regular visits to the various hamams.

Along with establishing linkages with the sex workers movement, the Sunday group also attempted to get involved in different issues and different people's movements. Towards this end, they invited many human rights and women's rights activists to address and participate in the Sunday group meetings. The Sunday group also actively participated in the protests and dharnas under the banner of the *People's Initiative for Peace (PIP)* following the Gujarat carnage, *Karnataka Citizens' Initiative against War (KCIAW)*, *Janamatha*, *Narmada Solidarity Forum (NSF)*, *Mahila Okkoota*, and many other initiatives. The increasing participation of hijras and kothis in these protests has to a great extent visibilised sexuality minorities' concerns in the minorities rights' groups.

This process of collectivisation, both internally as well as by networking with other social movements, gave a lot of self confidence to kothis, hijras, and transgender sex workers in Bangalore who started resisting police violence. The formation of *Vividha* shows that kothis, hijras, and transgender sex workers in Bangalore are at last moving from being silent victims to working collectively to fight for the rights of not only sexuality minorities but also other minorities.

5.2 Crisis intervention in cases of violence

This might be one of the most powerful strategies, which has been employed in Bangalore towards building a sense of community. Till recently the interactions in the lives of the hijra by outside groups have been in the nature of anthropological studies about how 'exotic' or 'curious' the practices of the hijra community are. To questions by hijras as to how these studies would benefit them there have been no answers. Naturally, there is a distrust among marginalised groups about whether such interactions would ever benefit them.

Further in the case of queer people, the fear of being outed as well as the fear of both societal and state violence tend to keep people in a state of continued disorganisation. Over the last two years, there has been an active struggle against such fragmentation and sense of distrust both within the community as well of well-meaning social action groups.

The first *PUCI-K* report indicates that the police capitalise on the fears of the queer community of being outed as well as the deeper societal homophobia

in order to blatantly subject queer people to all forms of harassment and violence, knowing fully well that the victims will never challenge them (However police harassment tends to impact English-speaking queers less and low-income queers more). In such contexts, interventions can be made at various levels. The experience of *Sangama* is instructive in using a model of crisis intervention based on community mobilisation.

The first strategy of *Sangama* has been to build a strong community network. This has primarily taken the form of establishing links with the community so that the violations of basic rights are reported. The first initiative in this regard was the formation of the *Coalition for Sexuality Minority Rights (CSMR)* which received its first report of the illegal detention of a kothi only after an intensive distribution of over 1000 pamphlets in cruising areas about the rights of sexuality minorities along with contact numbers in case of police harassment. This case was taken up as a campaign issue. These initial steps have built up in the community a sense of confidence that situations of violence and harassment will be responded to effectively.

The second strategy of *Sangama* has involved following up on the community-based networking by intervening actively when members of the queer community come to *Sangama* for legal help. Whenever the organisation found out about instances of violence and abuse, the matter was taken up in court. This intervention on a case-by-case basis had a positive impact in instilling confidence that crisis situations would be responded to. For example, in one case (which is still in court), the police violence which resulted in serious injuries was brought to the notice of the magistrate who asked the concerned police station to take action against the concerned constable. According to the advocate B. T. Venkatesh who has been representing the hijra and kothi sex workers, this case has had a positive impact on the treatment of hijras and kothis by the Cubbon Park police. Today the police know that there is no impunity for police violence inflicted against hijras and kothis as such violence would be responded to at the level of both legal and collective intervention.

Even bigger challenges have been faced with determination. One such situation arose when the flat-owners' association of the building in which *Sangama* is housed objected to hijras visiting the *Sangama* premises. When the police at the instance of this association refused to allow hijras to use the *Sangama* premises, letters were written to the Police Commissioner, Director General of Police (DGP), the Chief Minister, Chief Justice of the High Court, *National Human Rights Commission (NHRC)* and the *International Gay and Lesbian Human Rights Commission*.

(IGLHRC) with the objective of pressurising the police to cease their illegal action. The Chief Minister responded by noting that he was having the matter investigated, assuring Sangama that police excesses will be checked. A letter by the NHRC to the Commercial Street police station had the effect of Sangama getting an assurance from the police that they would protect the rights of all residents in that building, including employees and visitors to Sangama. The police were not only forced to back down but also to ensure the protection of the right of hijras to freedom of movement.

However crisis intervention has to be sustained, and police violence tends to intensify the moment pressure is eased. In March 2002, there were a spate of incidents of police assaults on the street-based kothi and hijra sex workers. On 26 March 2002, a kothi sex worker, who is also physically challenged, was brutally attacked by the police near the Bangalore bus station. On 27 March, the Cubbon Park police arrested a kothi sex worker, who is also a peer educator in an NGO working among MSMs (men having sex with men) on HIV/AIDS issues, on a false charge of theft. She was brutally abused in police custody. Sangama got her out on bail on 30 March when she was produced in the court. On 26 and 27 March the Cubbon Park police arrested five kothi sex workers on false charges of extortion. They were severely verbally/ physically/ sexually abused in custody. Sangama got them out on bail on March 30.

To complement the legal intervention, a vigorous campaign was launched at many levels, including press conferences, other protest rallies, representations to police officials, the Chief Minister and the NHRC, and e-mail campaigns. This campaign was covered by the media, especially in the Kannada press, in a very positive and supportive manner.

All of this increased yet further the confidence levels of hijras, kothis, and transgender sex workers who despite continuing police violence resisted it actively by invoking their rights and claiming the support of Sangama. The result was that there was a drastic reduction of police atrocities to the extent that there have been hardly any cases of police abuse of sexuality minorities in police stations or outside following these protests in Bangalore. In the meanwhile, the Sunday group had transformed itself into *Vividha*, an autonomous collective of sexuality minorities (comprising hijras, kothis, and other sexuality minorities), one of whose activities was the highly successful protest demonstration against Chandini's death on 8 December 2002. It was the first time that more than 150 queers came out publicly on the streets of Bangalore. During the rally, *Vividha* produced a charter of demands including repealing Section 377, *The Immoral Trafficking in Persons*

Act (ITPA) and recognition of hijras as women with equal opportunities and providing employment, housing, and rail travel concessions to them (See Annexure XII for leaflet).

5.3 Increasing visibility in the media

The year 2002 was notable for the hijra community in Bangalore for a number of events that visibilised their concerns, thereby having an impact on media coverage over the last few months. The first event was the 'Hijra Habba 2002', organised by YMCA, the *Lions Club*, and other organizations in association with *Sangama* on 24 August 2002. It was a festive occasion which began with sports events followed by cultural events such as singing, dancing, poetry reading, catwalks during the fashion show by hijras, and self-narratives by members of the community. The event was well covered by the media (including Kannada and Telugu satellite TV stations) which highlighted the enthusiastic participation of hijras who had come from all over India and also approvingly quoted Nandita Das's public rebuke of police commissioner Sangliana's thoughtless remarks on hijras and male sex workers. *Asian Age* and *New Indian Express* gave similar coverage to the nine-day All-India Eunuch's Conference held in December 2002, splashing photographs on their pages of hijras singing and dancing during this convention. To be sure, there was an element of exoticisation and sensationalism in such a representation of the hijra community whose uninhibited expression of their sexuality and lifestyle makes them objects of scorn and ridicule in the popular press. Still, their gay abandon captured in these photographs marks, to some extent, an affirmation of hijra cultural policies, and certainly a welcome departure from the usual construction of hijras in the media as lonely, fragmented, and dwelling in the depths of a gloomy and perverse underworld (see the section on popular culture's representation of sexuality minorities in the *PUCL-K Report on Sexuality Minorities*).

The positive representations in the media of hijra festivity have undoubtedly had an impact on media coverage of issues and concerns in the hijra community as well. On December 8, 2002, *Vividha* organised a very successful procession and public meeting in Bangalore which was joined by other individuals and groups of sexuality minorities, human rights and women's organisations, and friends and supporters of the community. A series of news reports and articles have recently appeared, especially in the regional media, about police harassment of kothi and hijra sex workers. On 2 April, 2002, a press conference was conducted jointly by *PUCL-K* and *SICHREM* on this issue, and it was widely covered by

English and Kannada newspapers. This was followed by two sympathetic articles on Suroopa, a transgender activist, relating her painful experiences as a hijra and her efforts to secure a decent and dignified existence. Similarly, *Janavahini* and *Agni*, both Kannada publications, have carried full-length and front-page features about the police harassment of *Sangama* and of kothis and hijras in Bangalore. There were also detailed reports in February 2002 about the attacks on Nippani sex workers and their organisations, *VAMP* and *SANGRAM*.

Most of these reports have been very positive and supportive, free of negative stereotyping and exoticisation, focusing on their just demands, and treating them not as a race apart but as part of a community whose human rights are often violated by society and the state. Such sympathetic coverage was prompted by the fact that hijras, kothis, and male sex workers came out as a collective not only fighting for their rights but also identifying themselves, as in the public protests following the Gujarat genocide, with the struggles of other minorities (religious and linguistic) and marginalised people (women, Dalits, Adivasis etc.).

In responding favourably to this emerging politicisation of hijras, transgenders, and male sex workers, the media is of course carrying out its developmental function of providing space to mobilisation of emerging social groups in a changing society. But improved media coverage is also due to the fact that a number of human rights groups, women's groups, and sexuality minorities groups had prepared the ground by their advocacy (through public meetings and rallies, press conferences etc).

Hence two broad conclusions can be drawn from media's coverage of hijras, transgenders and male sex workers. Firstly, queer rights groups need to be proactive in their approach to the media. Secondly, politicisation is essential in order to claim emerging spaces in Indian society as politicisation gives visibility, which is a step towards acceptance.

What does the future hold?

While these are indeed encouraging developments in the empowerment of the kothi and hijra community, there are other strategic areas of mobilisation that have yet to be explored. One such area is the powerful institution of law where the community's intervention can have a crucial impact. Hence in this section we will look at three legal strategies which can be employed:

- Mobilising existing legal frameworks
- Challenging the existing legal frameworks
- Using progressive international legal developments

In this section we will provide certain material which enables us to think through the strategies as well as to demystify the legal process as it currently functions. We will include basic information such as rights on arrest, sample bail applications etc. The resource section is also meant to aid the process of strategising for the future through mapping the existing hijra and kothi supportive institutions and organisations.

6.1 Mobilising existing legal frameworks

While it is true that the existing legal framework ends up serving the interests of the powerful, it is not a totalitarian structure, for there are many spaces in the law which can be used creatively to build up a jurisprudence of citizenship rights for hijra and kothi sex workers. The system of rights to which citizens are entitled is laid down in the Fundamental Rights chapter of the Indian Constitution. Many procedural safeguards are specified in legislations such as the *Criminal Procedure Code*, 1973. A citizen is entitled to file a case in the High Court for violation of their fundamental rights. Any violation of the *Criminal Procedure Code* can also be taken cognizance of by the concerned magistrate. Offences which are committed against members of the hijra and kothi community can be brought to the notice of the concerned police station. If these mechanisms fail, the *National Human Rights Commission* can be approached.

While these approaches may not always produce the desired results, they are part of a strategy of putting pressure on the state to recognize hijras and kothis as citizens. We will briefly

There are many spaces in the law which can be used creatively to build up a jurisprudence of citizenship rights for hijra and kothi sex workers

explore the entitlements provided under three legal frameworks — the Constitution, the Cr.P.C., and the Protection of Human Rights.

6.1.1 *The Constitution*

The Constitution of India is a foundational document that sets out a series of rights which every citizen is entitled to. The citizen is entitled to move the High Court or the Supreme Court in case of violation of any of these fundamental rights — to life, freedom of expression, equality, etc. Of crucial significance to hijras and kothis would be the constitutional safeguards of:

a) *Right to equality*

All persons have the right to equality before the law as well as the equal protection before the law. This right can be violated both by executive, legislative, and judicial action. The right to equality is further expanded upon in Art. 15 and Art. 16 wherein discrimination on the grounds of sex is prohibited both in terms of access to public places as well as in terms of employment by the state. There exists a case for seeing if discrimination against hijras and kothis does indeed amount to discrimination on the grounds of sex.

b) *Right to freedom of expression*

The Constitution under Art. 19 gives to every person the right to freedom of speech and expression. It is possible to make out the argument that when hijras and kothis cross-dress that becomes a part of the right of expression itself. However this ground has never been articulated in Constitutional terms. However it is important to note that this right can be restricted under Art. 19(2) on the grounds of public order, decency, or morality.

c) *Right to life*

As articulated repeatedly by the Indian Supreme Court the right to life includes the right to life with dignity. The right to life also includes the freedom from cruel, unusual, and degrading treatment. The right to live with dignity is a *de jure* right which hijras and kothis have as per Indian constitutional jurisprudence only it has never been mobilised in their favour.

If the Fundamental Rights (See Annexure I) are violated by the State, then the person can move the concerned High Court or Supreme Court. Thus for example, if a person is illegally detained, the High Court or the Supreme Court can be moved to question the detention through a writ of *habeas corpus*. The Constitution can be used to not only question administrative/ executive actions

which violates fundamental rights (e.g., the police not allowing you to freely access a public space) but also to challenge laws which violate Fundamental Rights. Thus for example if you feel that Sec 377 discriminates against homosexuals having sex but not heterosexuals, the law can be challenged on the basis of the right to equality (Art. 14), freedom of expression (Art. 19[1] a) and the right to life (Art. 21). At present there is a Constitutional challenge to Sec 377 which has been filed in the Delhi High Court and is pending disposal.

6.1.2 *The Criminal Procedure Code*

The Criminal Procedure Code lays out the procedure that should be followed when the criminal law is set in motion against any person. The police and the judiciary have to proceed only in conformity with this law with respect to all processes of investigation, trial and detention. Since it is not possible to cover the whole series of procedures envisaged in the Cr.P.C, we will deal with certain relevant areas in the context of legal empowerment among marginalised groups.

In the case of a cognizable offence (the most serious offences are classified as cognizable under the Code), arrest may be made on the basis of a reasonable suspicion or credible information being received. On arrest, the person must be produced before a magistrate within 24 hours. If a person is assaulted in police custody, they have the right to ask the magistrate to send them for a medical examination. The person who is arrested must also be communicated the grounds of his or her arrest (See Annexure II).

If a person is complaining of an offence which has taken place, such information shall be recorded in writing and signed by the complainant. The complainant has a right to get a copy of the First Information Report free of charge. If the Officer-in-Charge of the Police Station refuses to register the FIR, then a copy of the same should be sent to the Superintendent of Police.

In connection with the harassment and intimidation of sex workers, one of the crucial provisions centers around bail. Keeping a brothel, living off the earnings of a prostitute, and taking or keeping a person for the purpose of prostitution are non-bailable offences under the *Immoral Trafficking Prevention Act, 1956*. This means that the accused at the discretion of the Court may be entitled to bail. In contrast, soliciting (Sec 8(b) of *ITPA*, under which most hijras and kothis are routinely picked up, is a bailable offence, i.e., the accused shall mandatorily be released on bail. This means that provided the accused presents a bail application along with a surety's affidavit, he or she cannot be denied bail (See Annexure III). The magistrate has the discretion to release the accused on personal bond.

However if he does not do so then it is mandatory that he release the accused on the accused producing a surety. The surety's affidavit has to be accompanied by a ration card, salary slip or bank passbook for the proof of identity (See Annexure IV). However the problem in the cases of most sex workers is the inability to arrange personal surety. In such cases, the advocate for the accused can put forward an application under Sec 445 of the *Cr.P.C* asking for the court to allow the accused to deposit a sum of money in court in lieu of personal surety (See Annexure V).

In cases of offences committed against sex workers the sex workers always have the option of going to the concerned Police Station and filing an FIR (See Annexure VI). If the police refuse to register an FIR, the accused can send a copy of the FIR in writing to the SP of Police. Alternatively, the accused can file a private complaint under Sec 190 of the *Cr. P. C*, before the Magistrate.

6.1.3 The National Human Rights Commission

The *Protection of Human Rights Act*, under which the *National Human Rights Commission (NHRC)* has been set up, defines human rights as "Rights guaranteed under the Constitution of India or International Covenants". The mandate of the *NHRC* under Sec 21(1) includes the power to inquire *suo motu* into "A petition presented to it by a victim or any person on his behalf, into complaint of...violation of human rights or abetment thereof..." (See Annexure VII). Thus on a violation of human rights, any person can send in a complaint to the *NHRC*. One of the ways in which power can be made accountable is by ensuring that copies of every complaint are marked to the Police Commissioner, the Concerned Police Station, the Chief Minister, the Home Minister and the *NHRC* (See Annexure VIII).

6.2 Challenging the existing legal frameworks

While existing legal frameworks can be invoked to ensure that hijras and kothis are entitled access to rights like every other citizen, a large part of the effort has to concentrate on changing existing legal frameworks. What the limited engagement of the hijra and kothi community with the law so far has demonstrated is that there are significant legal hurdles to empowerment. Changes in existing legal frameworks can take three routes:

- Campaigning for progressive law reform
- Judicial interpretation
- Use of progressive international legal developments

6.2.1 Campaigning for Progressive Law Reform

While the most visible obstacle is of course Section 377 of the Indian Penal Code, there are numerous ways in which the Indian statutory framework deprives hijras and kothis of some of their basic rights. The ITPA and the civil law governing marriage are two chief areas that have elicited recurrent protests from the community. The importance of a campaign on the above laws is that it raises the public awareness about the issues of hijras and kothis. Awareness-raising on a public scale is especially important since the oppression of hijras and kothis owes as much to societal institutions as the state. Three observations are pertinent in this context:

Firstly, in its 172nd report, the Law Commission (chaired by retired Justice Jeevan Reddy) recommended the deletion of Sec 377 in the context of a redefined law on sexual assault to replace the old law on rape. In the new definition, sexual assault includes oral, anal, vaginal, and other forms of penetrative intercourse, including insertion of objects without consent between men and men, women and women, and men and women, within the ambit of the criminal law.

However this recommendation about deleting Sec 377 was made without any reference to the rights of groups affected by Sec 377. While scrapping Section 377 is an important objective, it should be done with the acknowledgment of the reasons for the same. Without taking note of the violence caused by Section 377, any law reform will be an empty gesture and will not bring about a change in the ground level.

Secondly, the ITPA, as has been pointed out earlier, is used less for preventing trafficking than for intimidating those who are the most vulnerable i.e., the individual sex worker as opposed to brothel keepers or pimps. This law needs to be reformed with a clear understanding of how the state is to deal with those engaged in sex work.

Finally, civil laws too are in need of urgent reform. If hijras are to have the same rights as other citizens, there is need for their recognition either as women or as a third gender identity. This change in civil law will entitle hijras to an entire gamut of rights available to all other citizens based simply on the fact that they belong either to the sex called male or to the sex called female.

6.2.2 Judicial interpretation

The other route through which existing legal frameworks can be changed is the mechanism of judicial interpretation. The Supreme Court of India in fact makes

law through its various judgements which are binding on all lower courts and become a part of the legal framework. The High Courts also make law through their interpretation of the Constitution. Hence approaching the Courts can also be a strategy in challenging the prejudices of the existing framework.

At present there is a petition asking for Sec 377 to be read down such that it decriminalises consensual sex in private between two partners of the same sex. But it must be noted that the petition asking for Kamala Jaan to be treated as a woman was rejected by the MP High Court. Thus approaching the courts can become a double-edged sword since an unfavourable verdict can also become the law and make the process of legal empowerment more difficult.

6.3 Using progressive international legal developments

The issue of transgender people and the law has been deliberated judicially in other countries. Through consistent activism, transgender people have been successful in winning recognition of their rights. It is useful to study these developments for the following reasons. Firstly, these developments convey the global nature of concern which is forming around the rights of those discriminated against on the basis of gender identity and sexuality. Secondly, these developments highlight the way the rights of transgender people are being conceptualised globally. The *International Bill of Gender Rights* is particularly useful in conceptualising the idea of a right to a gender identity and the right to freely express one's gender identity (See Annexure VII). Thirdly, the decisions in various jurisdictions highlight the forms that discrimination against transgender people has taken and how that discrimination is being questioned. Fourthly, these developments provide some material on the basis of which debate can be initiated in the Indian context. Finally, one hopes that these developments through a process of debate and dialogue would be incorporated in the judicial decisions of the Indian courts as well as any legislation which might be proposed by the Indian parliament.

In the UK context, the first decision which laid the ground for discrimination against transgender people was the decision in *Corbett vs. Corbett* (Probate, Divorce and Admiralty Division, 2 Feb, 1970) in which the Court held that the sex of a person is determined at birth in accordance with stated biological criteria and without any considerations of the person's psychological sex. The essential problem here is that law recognises sexual identity purely on the basis of the biological definition of the sex that we are born in.

However this position was challenged in *Christine Goodwin vs. the United Kingdom* (application no. 28957/95). In a landmark judgment on 11 July 2002, the European Court of Human Rights (ECHR) declared that “Under Article 8 of the Convention, a test of congruent biological factors can no longer be decisive in denying legal recognition to the change of gender of a post-operative transsexual”. In doing so, the Court has finally confronted the repeated spate of litigations on transgender issues, emerging mostly from the United Kingdom. This decision has clearly stated that the UK government’s failure to alter the birth certificates of transsexual people or to allow them to marry in their new gender role was a breach of the *European Convention on Human Rights*.

This position has been followed in other jurisdictions as well. For example in a decision of the Australian Family Court, (*Re. Kevin*, Family Court of Australia, Justice Chisholm, 12 October, 2001), a post-operative female-to-male transsexual established a *de facto* relationship with a woman. The person had not proceeded with the final possible surgical stage, that is the construction of a penis (still a complex, expensive and risky procedure). This court rejecting the essentialist view (that sex was fixed at birth) held in cases like *Corbett* declared categorically that this view was “...characterised by absolute and unsupported assertions that a person’s sex is fixed unalterably at birth, that no amount of surgery or other medical intervention can make any difference, and that the person’s self perception and role in society are equally irrelevant ... (which) is not a helpful approach”.

In New Zealand, in the case of *New Zealand Attorney General vs. The Family Court at Otahuhu* (November 1994), the Court upheld the principle that for the purposes of marriage, transsexual people should be legally recognised in their reassigned sex. In support of SRS, the court stated that “...acknowledging the sex-reassignment respects the rights of the individual concerned. Sometimes, this is expressed in terms of human rights — acknowledging the sex-reassignment assists the individuals to integrate into society. In their re-assigned sex, they are more likely to live comfortably in society and to contribute to it”.

In the United States there have been a series of positive decisions at many levels which are really a result of the strength of transgender articulation in the USA (Annexure IX).

Positive legislations and judgements are evolving in other countries like Canada, New Zealand and Singapore. There is growing recognition that states have an obligation to ensure that gender identity is not a tool for denying civil recognition. In this context a very useful document is the Bill by the State of

Victoria which gives a very comprehensive definition of gender identity by incorporating the various essentialist, social and cultural factors that contribute to a person's gender and sex identity.

However so far there has been no Declaration or Convention which covers the rights of transgender people internationally. This vacuum has been sought to be filled by global civil society interventions. Hence it is important to note the passing of the *International Bill Of Gender Rights* which provides a model for progressive legislative change (See Annexure X). Similarly, the *Equal Opportunity (Gender Identity and Sexual orientation) Bill* shows how legislations have sought to incorporate the concerns of transgender and homosexual people.

Equal Opportunity (Gender Identity and Sexual Orientation) Bill, debated and amended in the Assembly in 2000, in the state of Victoria, Australia.

"Gender identity" would be defined to mean:

- (a) the identification on a bona fide basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such) —
 - (i) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or
 - (ii) by living, or seeking to live, as a member of the other sex; or
- (b) the identification on a bona fide basis by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such) —
 - (i) by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or
 - (ii) by living, or seeking to live, as a member of that sex;

'Sexual identity' is an essential component of human expression, and inherent in the fundamental right to freedom of expression guaranteed under the Indian Constitution. A similar understanding of complexities of human life need to evolve in the Indian judiciary and legislation in recognising the rights of hijras, kothis, transgenders, and transsexuals as equal citizens of India.

Recommendations

What became apparent in the course of our study is that discrimination against hijras and kothis is embedded in both the state and civil society. The violence that this community faces is not only due to the state but also has deep societal roots. As has been argued in the course of this report, wider change is premised on changing existing social relations. Any proposal which tries to ensure that the dignity and selfhood of kothis and hijras is respected has to deal with a complex reality in which class, gender and sexuality play a crucial role. Apart from shifts in class relations, change would also crucially hinge upon overturning the existing regime of both gender and sexuality that enforces its own hierarchies, (e.g. heterosexuality over homosexuality), exclusions (e.g. hijras as the excluded category) and oppressions. While keeping in mind this wider context, a human rights approach has to deal with the various institutional contexts and think through ways in which change can be brought about. In this context the following proposals are made. These recommendations are also based on the demands made by the hijra kothi community in meetings held with them. Some of the demands made by them require us to re-orient our very imagination to conceptualise the nature of violation suffered by them. In this context the demand for recognition of the discrimination suffered by them as a form of untouchability (in terms of access to public spaces, employment, as well as the forms of violence they suffer) needs to be taken seriously.

7.1 Legal Measures

1. Every person must have the right to decide their gender expression and identity, including transsexuals, transgender, transvestites, and hijras. They should also have the right to freely express their gender identity. This includes the demand for hijras to be considered female as well as a third sex.
2. Comprehensive civil rights legislation should be enacted to offer hijras and kothis the same protection and rights now guaranteed to others on the basis of sex, caste, creed and colour. The Constitution should be amended to include sexual orientation/gender identity as a ground of non-discrimination.

Any proposal which tries to ensure that the dignity and selfhood of kothis and hijras is respected has to deal with a complex reality in which class, gender and sexuality play a crucial role.

3. There should be a special legal protection against this form of discrimination inflicted by both state and civil society which is akin to the offence of practicing untouchability.
4. Same-sex marriages should be recognized as legal and valid; all legal benefits, including property rights that accrue to heterosexual married people, should be made available to same-sex unions.
5. *The Immoral Trafficking in Persons Act, 1956* should be repealed. Sex work should be decriminalised, and legal and other kinds of discrimination against kothis and hijras should stop.
6. Section 377 of the *IPC* and other discriminatory legislations that single out same-sexual acts between consenting adults should be repealed.
7. Section 375 of the *IPC* should be amended to punish all kinds of sexual violence, including sexual abuse of children. A comprehensive sexual assault law should be enacted applying to all persons irrespective of their sexual orientation and marital status.
8. Civil rights under law such as the right to get a passport, ration card, make a will, inherit property and adopt children must be available to all regardless of change in gender/ sex identities.
9. Reservation in educational institutions such as schools and colleges as well as in government employment.

7.2 Police Reforms

1. The police administration should appoint a standing committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against kothis and hijras in public areas and police stations, and the guilty policeman immediately punished.
2. The police administration should adopt transparency in their dealings with hijras and kothis and make available all information relating to procedures and penalties used in detaining kothis and hijras in public places.
3. Protection and safety should be ensured for hijras and kothis to prevent rape in police custody and in jail. Hijras should not be sent into male cells with other men in order to prevent harassment, abuse and rape.

4. The police at all levels should undergo sensitisation workshops by human rights groups/ queer groups in order to break down their social prejudices and to train them to accord hijras and kothis the same courteous and humane treatment as they should towards the general public.

7.3 Reforming the Medical Establishment

1. Initiate a debate on whether being transgender should be classified as a gender identity disorder or whether it should be seen as a choice.
2. The Medical Council of India should issue guidelines to ensure that discrimination in medical treatment of hijras and kothis, which would include refusal to treat a person on the basis of their gender identity, is treated as professional misconduct.
3. Reform medical curricula in medical colleges that moves beyond seeing transgenderism as a disease and a deviance.
4. Free SRS services for hijras should be provided in government hospitals.

7.4 Interventions by Civil Society

1. Human rights and social action organisations should take up the issues of hijras and kothis as a part of their mandate for social change. Socialist and Marxist organisations, Gandhian organisations, environmental organisations, dalit organisations and women's organisations, among others, which have played a key role in initiating social change, should integrate the concerns of hijras and kothis as part of their mandate in sites such as the family, religion and the media which foster extreme forms of intolerance to gender non-conformity.
2. A comprehensive sex-education program should be included as part of the school curricula that alters the heterosexist bias in education and provides judgement-free information and fosters a liberal outlook with regard to matters of sexuality, including orientation, identity and behaviour of all sexualities.
3. The Press Council of India and other watchdog institutions of various popular media (including film, video and TV) should issue guidelines to ensure sensitive and respectful treatment of these issues.
4. Setting up of counselling centres to enable families to understand issues of gender non-conformity in their children.
5. Setting up of short-stay homes for hijras and kothis in crises.

Resource List

Books and articles

- A. Jackson, Peter and Gerard Sullivan ed., *Lady Boys, Tom Boys, Rent Boys: Male and Female Homosexualities in Contemporary Thailand*, Harrington Park Press, NY, 1999
- Abelove, Henry et. al. (eds.), *The Lesbian and Gay Studies Reader*, Routledge, New York, 1993.
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- Ann Minor, Leslie. *Conceiving Parenthood: Parenting and the Rights of Lesbian, Gay, Bisexual and Transgender People and their Children*, IGLHRC, San Francisco, 2000
- D' Souza, Dilip. *Branded by Law: Looking At India's Denotified Tribes*, Penguin, New Delhi, 2001
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- E. Israel, Gianna and Donald E Tarver, *Transgender Care: Recommended Guidelines, Practical Information and Personal Accounts*, Temple Univ.Press, Philadelphia, 1997
- Epstein, Julia and Kristina Straub, *Body Guards: The Cultural Politics of Gender Ambiguity*, Routledge, NY, 1991
- Fernandez, Bina (ed.), *Humjinsi: A Resource Book on Lesbian, Gay and Bisexual Rights in India*, India Centre for Human Rights And Law, Mumbai, 2002.
- G. Raymond, Janice, *The Transsexual Empire*, The Women's Press, 1980
- Gupta, Alok, "The History and Trends in the Application of the Anti-Sodomy Law in the Indian Courts", *The Lawyers*, Vol.16, No. 7, p. 9
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- L. Brown, Mildred and Chloe Ann Rounsley, *True Selves: Understanding Transsexualism — for Families, Friends, Coworkers, and Helping Professionals*, Jossey-Bass, San Francisco, 1996
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- Nanda, Serena, *Neither Man nor Woman: The Hijras of India*, California, The Wadsworth Publishing Co., 1990
- Nanda, Serena, *Hijra as Neither Man Nor Woman*, Abelow, Henry et al (eds.), The Lesbian and Gay Studies Reader, Routledge, New York, 1993
- Ordenez, Juan Pablo, *No Human Being is Disposable: Social Cleansing, Human Rights and Sexual Orientation in Colombia*, International Gay and Lesbian Human Rights Commission, 1995
- Pattanaik, Devdutt, *The Man Who Was a Woman and Other Queer Tales*, New York, Harrington Park Press, 2002
- People's Union of Civil Liberties-Karnataka, *Human Rights Violations against Sexuality Minorities in India: A PUCL-K Fact-Finding Report About Bangalore*, 2001
- Radhakrishna, Meena, *Dishonoured by History: 'Criminal Tribes' and British Colonial Policy*, Orient Longman, New Delhi, 2001.
- Roscoe, Will, *Changing Ones: Third and Fourth Gender in Native North America*, St. Martin's Griffin, NY, 1998
- Saeed, Fouzia, *Taboo! The Hidden Culture of a Red Light Area*, Oxford University Press, Karachi, 2001
- Sangram, *Of Veshyas, Vamps, Whores and Women*
- Seabrook, Jeremy, *Love in a Different Climate: Men who have Sex with Men*, London, Verso, 1999
- Sharma, S. K. , *Hijras: The Labelled Deviants*, New Delhi: Gian Publishing House, 1989.

Singer, June, Androgyny: *The Opposites Within*, Nicolas-Hays, Maine 2000

Singh Anjolie, *Transsexual and the law*, TILEM, National Law School of India University, 1999

Singh, Dayanita, *Myself, Mona Ahmed*, 2002

Talwar, Rajesh, *The Third Sex and Human Rights*, Gyan Publishing House, New Delhi, 1999

Travesti, Don Kulick, *Sex Gender and Culture among Brazilian Transgendered Prostitutes*

Vanita, Ruth et. al., *Same Sex Love in India*, New York, Palgrave books, 2000

Audio-visual resources

Darmiyaan -- feature film directed by Amol Palekar.

In the Flesh -- documentary film directed by Bishaka Datta.

Paper Flowers -- documentary film produced by Deepa Krishnan.

Tale of the Night Fairies -- directed by Shohini Ghosh.

Tamanna -- feature film directed by Mahesh Bhatt

A mermaid called Aida -- directed by Riyad Vinci Wadia.

My life in pink -- feature film directed by Alain Berliner

Sh...sh...s(he) -- documentary film directed by Debalina

Internet resources

 www.pucl.org


 <http://sangamaonline.org>

 <http://www.samabhavana.org>

 www.transgenderlaw.org

 www.gender.org


 www.annelawrence.com


 http://www.geocities.com/pri_29_2000/indianbeauty1-6.html


 www.sexuality.org


 www.nfi.net

 www.humsafar.org

 www.ichrl.org

 <http://www.geocities.com/leylasuhagi/hijra.html>

 <http://www.ars-rhetorica.net/Queen/Volume11/Articles/IntroDennis.html>

 <http://home.interlink.or.jp/%7Etakeshii/>

*Groups & organizations working on sexuality issues***Andhra Pradesh****Hyderabad**

Darpan Foundation A human rights organisation for sexuality minorities in Andhra Pradesh. Flat-G1, Sujatha Hills Apts, West Marredpally, Secunderabad-26. Tel: +91 (O) 552 06448. Helpline: 552 06449. E-mail: darpanfoundationhyd@rediffmail.com

Mithrudu Sexual Health agency for Men who have Sex with Men (MSM). 5-8-595/B/16 Mubarak Bazar Lane, Abids Road, Hyderabad - 500 001. Tel: 040 678 6248 E-mail: mithrudu@yahoo.com

Saathi/ Sampark Support space for gay, bisexual men. 2nd Floor, Sana Apartments, Red Hills, Lakdikapool, Hyderabad - 500004. Tel: 657 1225/ 337 5401 E-mail: saathi99@yahoo.com

Guntur

Friends Welfare Society P.B.No.510, Pattabhipuram, Guntur - 06

Kurnool

AASHA 1-222, Near Marremma Temple, Barpet postoffice, ADONI, Kurnool District

Vijayawada

Jyothi Welfare Society 76-11-4 Kolla Faram Road, Bhavanipuram,

Vijayawada, 520 012, India Tel: 0886 425401 E-mail: jyothiwelfare49@hotmail.com

Saathi Gay support group. 11-1-231. 2, B R P Road, One Town, Vijayawada - 520 001. Tel: 635 241

Vishakapatnam

New group being formed Write to Dominick, P.O. Box 203, Vishakapatnam, AP - 530 001

Sahara Trust D.No.11/416, Rockdale Layout, Maharanipect, Vishakhapatnam 02

Snehithudu Welfare Society 29-44-49 Chakali Street, Daba Gardens, Vishakapatnam, 530 020, India. E-mail: rajuram27@yahoo.com

Warangal

Sannihita Shanthinagar, Beside Railway Track, Hanumkonda, Warangal

Bihar**Patna**

Aasra Charitable Trust Group for gay and bisexual men. 101 Gauri Shankar Apartments, Kurji, Patna 800 010 India. Tel: 0612 2271598 E-mail: aasra@vsnl.net

Karnataka

Bangalore

Alternative Law Forum (ALF) Provides legal services for various marginalised groups including queer people. 122/4, Infantry Road, (Opp. Infantry Wedding House). Bangalore 560 001. Tel: 286 5757. E-mail: alforum@vsnl.net Website www.altlawforum.org

Gelaya Trust No. 69, 1st Floor, 1st Main, New Tharagupet, Bangalore – 560002 Tel: 6702295. E-mail: gelayaa2000@yahoo.co.in

Good As You An informal support group for lesbian, gay, bisexual, transgender and other non-heterosexually identified people. Meets on Thursdays from 6:30pm to 8.30pm. Tel: Call Sahaya helpline on 223 0959. E-mail: goodasyoubangalore@yahoo.com Website: www.geocities.com/goodasyoubangalore/

Indian Institute of Geographical Studies (under The Dharani Trust) Looks at academic studies on various issues including sexuality minorities through their Sexualities and Spaces Division. E-mail: thedharanitrustindia@yahoo.com Website: www.geocities.com/thedharanitrustindia/

Jagruthi Sexual health agency for MSM (Men who have Sex with Men)

and transgenders, providing health services and HIV awareness. C3, 2nd Floor, Jyothi Complex, 34/1 Infantry Road, Bangalore - 560 001. Tel: 286 0346 E-mail: jagru@vsnl.net

Prerana Informal support group for lesbians and bisexual women. Meetings are held on the first and third Sunday of each month. Contact the *Sahaya* Help Line, on 223 0959, on Tuesdays and Fridays, between 7 and 9 PM or E-mail: sahayabangalore@hotmail.com (Subject: Attn: Prerana Support Group)

Queer IISc An online discussion forum for LGBTQ students, alumni and staff of the Indian Institute of Science and other research institutes in Bangalore. For more details contact: E-mail: queeriisc@yahoo.co.in

Sahaya Telephone Helpline Helpline for queer people. Open Tuesday and Friday, 7 PM to 9 PM. Tel: 223 0959 E-mail: sahayabangalore@hotmail.com

Sangama Sexuality minorities' rights organization, offering other services like documentation, outreach and advocacy on sexuality issues. Flat 13, 3rd Floor, 'Royal Park' Apartments, 34 Park Road, Tasker Town, (Behind Hotel 'Harsha', Near Shivajinagar Bus Stand) Bangalore - 560051, India. Tel: 2868680/ 2868121. E-mail:

sangama@sangamaonline.org Website: www.sangamaonline.org

Sex workers forum A collective of female, kothi and hijra sex workers. This group meets every Saturday to discuss and redress issues of police harassment and violence. For further information contact *Alternative Law Forum*.

Swabhava NGO providing access to support services for LGBT people. No. 54 Nanjappa Road, Shantinagar, Bangalore - 560 027. Tel: 212 4441. E-mail: swabhava_trust@hotmail.com

Vividha An autonomous collective of sexuality minorities. Meets every Sunday from 3PM to 6 PM. Contact *Sangama* E-mail: vividhabangalore@hotmail.com

Mysore

Gelaya Trust No. 380, 4th Cross, off M. G. Road, Udayagiri 2nd Stage, Mysore - 570 019 Tel: 245 7751 E-mail: gelayaa2000@yahoo.co.in

Maharashtra

Mumbai

Aanchal Help line (for lesbians and women who have sex with women) Tuesdays, Wednesdays and Fridays between 3pm and 6pm. C/o India Centre for Human Rights and Law. Mumbai. Help line: 022- 3704709. Saturday 3 to 7 PM. E-mail: aanchal69@hotmail.com

Arawanis Social Welfare Society A hijra group. E-mail:

arawanis@rediffmail.com

Char Chowghi (for kothis) C/o The Humsafar Trust. Contact : Gauri Sawant / Earnest Noronha. E-mail : sakhicharchowghi@rediffmail.com

Gaybombay group Primarily for gay men. Website: www.gaybombay.com

India Centre for Human Rights and Law (ICHR) Human Rights Group which has a separate division on gay/lesbian/bisexual rights. 4th Floor, CVOD Jain High School, Hazrat Abbas Street, (84, Samuel Street) Dongri, Mumbai - 400 009. Tel: 371 6690/ 375 9657 E-mail: huright@giasbm01.vsnl.net.in. Website: www.indiarights.com

Lawyers Collective (HIV/AIDS Unit) 4th Floor, Jalaram Jyot, 63 Ram Janambhoomi Marg, Fort, Mumbai 400001. India. E-mail: lawyers@vsnl.com Website: http://www.hri.ca/partners/lc/

Samabhavana Group for sexuality minorities. E-mail: sambhava@vsnl.com Website: www.samabhavana.org

Stree Sangam A collective of lesbian and bisexual women. Post Box 16613, Matunga, Mumbai - 400 019. E-mail: streesangam@yahoo.com.

The Humsafar Trust Drop-in centre operated by Humsafar Trust for gay men and lesbians. Meets on Friday from 6 to 9 PM. PO Box 6913,

Santacruz (West), Mumbai Metro -
400054 Voice Mail: 9726913 E-mail:
humsafar@vsnl.com Website:
www.humsafar.org

Udaan – Mumbai No, 8, Building No.
6 A-Wing, Ground Floor, Jai Santoshi
Maa CHS, Pantnagar, Ghatkopar
(East). Mumbai, 400 075. E-mail:
udaanpanchis@yahoo.com
udaantrust@vsnl.net A group for queer
people (including kothis) and HIV+
sexuality minorities.

Pune

Olava A collective of lesbian and
bisexual women. Post Box 2108,
Model Colony Post Office, Pune - 16.
E-mail: olava_2000@yahoo.com

Samapathik Gay Support Group.
E-mail: samapathik@hotmail.com

Udaan – Pune 473/474 Sowar Peth,
Parab Niwas, Pune 411 011 E-mail:
udaanpanchis@yahoo.com,
udaantrust@vsnl.net

West Bengal

Bongaon

Prantik Readra Para, PO Bongoan,
Dist. No 24 Parganas, Bongoan
743235 West Bengal. E-mail:
Anjnil23@rediffmail.com

Kolkata

Counsel Club – Barasat Support
group for lesbians, gay men, bisexuals
and transgender people Meets last
Sundays of the month, 5-7 pm.

Address : C/o Rup Chowdhury Post
Box No. 12 Barrackpore H.O. Dist. 24
Parganas (N) Phone : 359 8130 (C/o
Integration) E-mail : counselclub93@
hotmail.com

Counsel Club Support group for
sexuality minorities. Meets 1st and 3rd
Sundays of the month, 5-8 pm. C/o
Ranjan, Post Bag 794, Kolkata - 700
017. E-mail:
counselclub93@hotmail.com. Phone :
359 8130 (C/o Integration)

Palm Tree Avenue Integration Society A
health awareness initiative for the
youth and sexual minorities (lesbians,
gay men, bisexuals and transgender
people). Library service : Tuesdays,
Thursdays and Saturdays, 3-6 pm
(Directions over phone). C/o Pawan,
Post Bag 10237, Kolkata - 700 019.
Phone : 359 8130 (functions as
helpline SAHAYAK on Mondays,
Wednesdays and Fridays, 3-6 pm).
E-mail: pawan30@yahoo.com

Praajak Development Society

Development organisation working
around issues of masculinities with a
primary focus on boys and male youth.
Also works with gender variant males
including hijras, kotis and duplis/
doparathas. 468A, Block K, New
Alipore, Kolkata - 700053. Tel: 400
0455 Fax: 400 0592 E-mail:
praajak@yahoo.co.in

Pratyay Support group for kothis and
other MSMs. P251/B Purna Das

Road, Calcutta 700 029, India
E-mail: pratyay@hotmail.com,
pratyaygendertrust@yahoo.co.in

Sappho Support group for lesbian and bisexual women.
E-mail: malvi99@hotmail.com

Sarani Experimental performing arts troupe focusing on development issues like sexual minority rights and sexual health. 84 Jhowtalla road, Suite No.2, Kolkata - 700 017.

Gujarat

Rajpipla

Contact: Sylvester Merchant, P.B.No. 47, Rajpipla 393145

Vadodara

Lakshya Trust Sexual health agency for gay men, kothis and hijras. 105 Raj Mandir Apts, 62 Alkapuri, Baroda 390 007 Tel: 0265 332340
E-mail: lakshya123@rediffmail.com

Kerala

Foundation for integrated Research in Mental Health (FIRM) An NGO which supports all sexuality identities. PTP N E 30. PTP Nagar. P. O. Trivandrum. 695038
E-mail: jayasree@vsnl.com
Phone: 0471-2368142

Sahyatrika Project (for lesbian and bisexual women) T.C. 26/1666, Convent Road, Vanchiyoor,

Trivandrum 35. Helpline: 0471-575810 Thursdays 3.30 pm to 7.30 pm.

E-mail : sahyatrika@rediffmail.com

Sex Workers Forum Anasooya, PTPN-E-31, PTP Nagar, Thiruvananthapuram, Kerala, India 696038 Tel- ++91471 2368142.
E-mail - swfk@asianetindia.com

Vathil (Kerala LBGT discussion forum which meets the second Sunday of every month 10 am to 4 pm.) Avishkaram, P.B.NO:2461 Thiruvananthapuram 11 Kerala.

E-mail: avishkaram@yahoo.co.in.
Tel: +91 471 2368142 (11:00 AM - 04:00 PM on all working days). +91 471 2369498 (02:30 PM - 05:30 PM on Thursdays only)

Orissa

Cuttack

AAKASH (Advocacy for AIDS, Knowledge and Sensible Health) Mansa Nature Cure Centre, Block Colony, Raj-Khariar, Dist. Nuapada, Pin 766 107(Orissa) Phone : 06671 32131
Cuttack

Saathi Cuttack Chapter. P.O.Box 512 Chandni Chowk. HPO. Cuttack Orissa 753002

Uttar Pradesh**Lucknow**

Bharosa Sexual Health agency for Men who have Sex with Men (MSM). 216/6/5 Peerpur House, 8 Tilak Marg, Lucknow - 226 001. Tel: 0522 208689 E-mail: bharosatrust@yahoo.co.in

Naz Foundation International (Regional Liaison Office) 9 Gulzar Colony New Berry Lane Lucknow - 226 001. Phone: 205781/2 Fax : 205783 E-mail: nazfoundint@yahoo.com

Manipur**Imphal**

Lifeline Foundation Moirangkhom Sougaijam, Leirak, Imphal - 795 001, Manipur Tel: 0385-2229766 E-mail: lifeline24@rediffmail.com; sushilhuidrom@rediffmail.com

New Delhi

AIDS Bhedbhav Virodhi Andolan Post Box 5308, New Delhi 110053

Campaign for Lesbian Rights (CALERI) An activist collective working for lesbian and bisexual women's rights E-mail: caleri@hotmail.com

Human Rights Law Network 65, Masjid Road, Jungpura, New Delhi 110014. Tel 24324501/24316922 E-mail hrindel@vsnl.net

Humrahi Group for gay and bisexual women. Meets every Saturday from 6 to 8 PM. Runs a helpline (685 1993) on Mondays and Thursdays from 7 to 9 PM, for gay/bisexual men. D45, Gulmohar Park, New Delhi -110 049. Tel: 685 1970/1 E-mail: humrahitrust@hotmail.com. Website: www.geocities.com/WestHollywood/7258

Lawyers Collective (HIV/AIDS Unit) 63 Masjid Road, Jungpura, New Delhi 110014. Tel 4321101/4321102

Naz Foundation (India) Trust Sexual Health agency for Men who have Sex with Men (MSM). Also works on HIV/AIDS, sexual health and sexuality issues. D45, Gulmohar Park, New Delhi -110049. Tel: 2656 7049/ 3929 Fax: 26859113 E-mail: nazindia@bol.net.in *Humnawaz:* For Hindi Speaking gay men, Mondays, 6-8 PM *Humjoli:* For kothis, Wednesdays, 6-8PM *Humrahi:* For English Speaking gay men, Fridays, 6-8 PM

PRISM - People for Rights of Indian Sexuality Minorities Works on issues affecting sexuality minorities. E-mail: prism_delhi@yahoo.co.in

Sangini Group for Lesbian and Bisexual women. Meets every Saturday from 3 to 5.30pm. Runs a help line on Tuesdays and Fridays 6 to 8 pm for lesbian and bisexual women. D45, Gulmohar Park, New Delhi -110 049.

Tel: 685 1970/1

E-mail: sangini97@hotmail.com

Sidhhartha Gautam Trust for Sexual Minorities B5/207, Safderjung Enclave, New Delhi- 110029. Ashwini Ph: 11-610-1391. Fax: 11-685-5997

TARSHI (Talk About Reproductive and Sexual Health Issues) Helpline (Monday to Friday) for information, counseling and referrals on sexuality issues. Tel: 462 2221/462 4441

Transpal Foundation Transgender support,

E-mail: transpals@hotmail.com, transpals@yahoo.com

Tamil Nadu

Chennai

Sahodaran Sexual Health agency for Men who have Sex with Men (MSM). 25 Sterling Road, 1st Cross, Nungambakkam, Chennai 600 034, India Tel: 825 2869 Fax: 825 2859 E-mail: sahodara@md3.vsnl.net.in. Website: www.sahodaran.faithweb.com

Social Welfare Association for Men (SWAM) Support group and drop-in centre for MSM, gay, bisexual, and HIV positive men. No.5, Natarajan Street, Jaffer Khanpet, Balakrishnanagar, Chennai - 600083

South India Aids Action Program (SIAAP) Sexual Health agency for Men who have Sex with Men (MSM)

and sex workers. 65, 1st St. Kamraj Avenue, Adyar, Chennai - 600 020. E-mail: siapp@satyam.net.in

Pondicherry

Snehithan No 61, Ground Floor, Ellaiaimman Koil Street, Pondicherry 605 001 Tel: 0413 222 469

E-mail: neshgak@yahoo.co.in

Thozhen Sexual Health agency for Men who have Sex with Men (MSM) 106/2 Rue François Martin, Kourousoukoupam, Pondicherry - 605 012.

E-mail: thozhen_2000@yahoo.com

Trichinapalli

Snegyitham 73, Bharath Tower, Salai Road, Thillai Nagar, Trichinapalli, 620 073, India

E-mail: snegyitham@rediffmail.co.in

Fundamental Rights

Annexure I

Art. 14 Equality before law.- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Art. 15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-
 - (a) access to shops, public restaurants, hotels and palaces of public entertainment; or
 - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Art 16. Equality of opportunity in matters of public employment.-

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- (3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Art. 17 Abolition of Untouchability.- "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Art. 19 Protection of certain rights regarding freedom of speech etc.-

- (1) All citizens shall have the right-
 - (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India; and
 - (f) to practise any profession, or to carry on any occupation, trade or business.
- (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

- (3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
- (4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
- (5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.
- (6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-
 - (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
 - (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Art. 20 Protection in respect of conviction for offences.-

- (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as

an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) No person accused of any offence shall be compelled to be a witness against himself.

Art. 21 Protection of life and personal liberty.- No person shall be deprived his life or personal liberty except according to procedure established by law.

Art. 22 Protection against arrest and detention in certain cases.-

- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Your Rights under Indian Law

1. FIR: You are entitled to a copy of the FIR which you register free of charge
2. Arrest: No use of handcuffs without judge's permission
3. Police arresting you must wear clear and visible name tags and uniform
4. You must be told why you are arrested, your right to bail and a lawyer of your choice
5. Memo of arrest is to be made with time and date of arrest and to be signed by family member/respectable member of neighbourhood
6. The Police must inform any person interested in your welfare about your arrest and the location of the place where you are kept when under arrest.
7. An accurate list of things seized from you must be prepared and you are entitled to a copy immediately.

Legal advice

1. If poor you have the right to demand a competent counsel at state expense
2. If your lawyer is not competent you have the right to change your lawyer.
3. You have the right to interviews, visits and confidential communications with your lawyer.
4. Get your lawyer/organization/friends to keep calling up the Police Station wherein you are detained. If such calls are made the police know that there is somebody to support you and are less likely to mistreat you.

Search

1. Two independent witnesses (Panchas) should always be present when you are your premises are searched.

2. Call two witnesses (not from your family) to witness the search

Bail

1. Apply to the Court for release on bail immediately (**See sample bail application**)
2. Keep the following ready for production on grant of bail (Ration card, salary slip, bank pass book or other proof of identity of the person standing surety)
3. Even if you do not have sureties you may be released on the deposit of a certain sum of money in court.
4. If you are refused bail you have the right to get bail if :
5. The chargesheet is not filed within 60 days of arrest , if the offence is punishable for a period of less than 10 years.
6. The chargesheet is not filed within 90 days of arrest, if the offence is punishable for a period of more than 10 years.
7. If your bail is set too high, apply for a reduction.

Interrogations

1. You can consult with your lawyer when you are being interrogated whether you are arrested or not.
2. You can't be forced to make a confession before the police or magistrate.

Torture

1. Torture is illegal. No solitary confinement, hard labour , change in diet transfer without permission of the Judge
2. If a confession has been taken after torture , inform the judge and retract it.
3. Complain to judge about torture beatings etc and ask for a medical examination immediately. The state must pay compensation for illegal detention and torture.

4. File a complaint before the Magistrate against the concerned Police Officer in case of torture, beating etc.

Production in Court

1. You have the right to get legible copies of all documents filed by the prosecution against you.
2. You can demand food and other basic amenities during your custody in court.
3. You have to be produced before the Magistrate within 24 hours of arrest. If you are not so produced, complain to the Magistrate.
4. You cannot be remanded to custody in your absence.

Medical examination

1. Request immediate medical examination on arrest. The medical examiner must record all injuries on a written form. Only sign an accurately filed form.
2. Ask for a copy of the form
3. Ask for the Magistrate to send you to the hospital before police custody is granted.
4. A medical examination every 48 hours while in custody.
5. If you are under 18 years of age and your age is recorded wrongly and there is no documentary proof of your age, insist on medical examination to determine your age.
6. Make an application for medical treatment in case of sickness

HIV /Terminal Illness

You may be entitled to premature release.

(Based on the poster "Know Your rights" prepared by Human Rights Law Network/Lawyers Collective)

Sample Bail Application in Soliciting Cases

IN THE COURT OF THE ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE,

BANGALORE
CRIME. No. of 2003

BETWEEN:

THE STATE OF KARNATAKA

Represented by
(Police Station)

COMPLAINANT

AND:

(Name of Accused) ACCUSED

Under Section 436 of the Code of Criminal Procedure, the
accused above named states as follows:

1. The complainant has registered a case in the aforesaid crime number against the accused for offences punishable under Sections 8(b) of the Immoral Traffic (Prevention) Act, 1956.
2. The accused comes from a lower socio-economic strata. She has no means of social and economic support and would be put to great hardship if she was denied bail
3. She is innocent and has not committed any offence, much less those alleged against her. Seeking her enlargement on bail the accused has made this application.
4. None of the offences alleged to have been committed by the accused are punishable with death or life imprisonment. All the offences alleged against the accused are bailable offences. The accused has not been previously convicted of an offence punishable with death or life imprisonment.

5. No prejudice will be caused to the complainant if the application is allowed, while rejection of the same will cause untold hardship and injury to the accused. The accused would be put to great hardship, if this application is not accepted by this Hon'ble Court.
6. The accused undertakes to present herself before this Hon'ble Court on all dates of hearing and hence prays that she be enlarged on a personal bond.

WHEREFORE, the accused prays this Hon'ble Court to be pleased to enlarge her on bail in the Crime Number /2003 , for the ends of justice.

Bangalore

(Advocate for the Accused)

Dated: -

Surety's Affidavit

IN THE COURT OF THE ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE,

BANGALORE
CRIME. NO. OF 2003

BETWEEN:

STATE OF KARNATAKA

Represented by

(Police Station)

COMPLAINANT

AND

(Name of Accused) ACCUSED

Surety Name

Address

SURETY'S AFFIDAVIT

I, S.N, son of R. N presently working as Field Officer at located at do hereby solemnly swear and state as under :-

1. I know the accused. I am prepared to stand as surety for this Hon'ble Court releasing her on bail.
2. I undertake to produce the accused before the Investigating Officer when called upon to do so before this Hon'ble Court on all the dates of hearing.
3. I am solvent. I am a Field Officer at Bank, drawing an monthly salary of Rs A photocopy of the salary statement/ Pass book/ Ration card is also produced herewith and marked as Annexure 'A'.

I, S. N., do hereby solemnly and sincerely declare that this is my name and signature and what is stated above is true to the best of my knowledge, information and belief.

Identified by me

DEPONENT

Advocate

Bangalore

Date

Application for Submission of Cash Surety

IN THE COURT OF THE ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE,

BANGALORE

CRIME. No. _____ of 2003

BETWEEN:

THE STATE OF KARNATAKA

Represented by

(Police Station)

COMPLAINANT

AND:

(Name of Accused)

ACCUSED

Application filed on behalf of the accused under Section 445 of
the Code of Criminal Procedure:

The accused above named most respectfully submits as follows:

The accused who is in Judicial custody for the offence under
Sec 8(b) of the Immoral Trafficking in Persons Act 1956, is not
in a position to arrange surety for her release. The accused above
named prays that this Hon'ble court may be pleased to impose
and accept cash surety in lieu of surety for release of the accused
and to ensure her regular appearance before this Hon'ble Court
in the interest of justice and equity.

Bangalore

Date

(Advocate for the accused)

First Information Report (FIR)

101

To,
The Duty Officer in-charge
Police Station
City/District
State

Subject: (a one line statement of the violation)

1. A statement of the facts of what happened, time of occurrence, date of occurrence and place of occurrence.
2. Description of how the offence was committed
3. Description of the person who committed the offence, clothing, what vehicle he used (license no) , name and address if available , if weapons were used what weapons were used.
4. A statement of what were the offences committed, murder, extortion, etc..
5. If possible what section of the Indian Penal Code is being violated?
6. The FIR should be signed by the person making the statement.
7. The FIR should be registered as soon as possible and a copy of the same should be taken from the Duty Officer in Charge.

Annexure VI

RHR-120

10062

P03

Powers of the National Human Rights Commission (NHRC)

Art. 12 Functions of the Commission (Protection of Human Rights Act)

The Commission shall perform all or any of the following functions, namely:

- (a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of
 - (i) violation of human rights or abetment thereof or
 - (ii) negligence in the prevention of such violation,by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
- (j) such other functions as it may consider necessary for the protection of human rights.

The National Human Rights Commission, Sardar Patel Bhavan, Sansad Marg,
New Delhi-110001.

91-11-23348478

91-11-23340016 (FAX)

E-Mail: covdnhrc@hub.nic.in

www.nhrc.nic.in

Dr. Justice A.S. Anand

Chairperson

91-11-23340891 (O)

E-Mail: chairnhrc@nic.in

Smt. Justice Sujata Vasant Manohar

Member

91-11-23348476 (O)

E-Mail: smanohar@ren02.nic.in

Shri Virendra Dayal

Member

91-11-23347064 (O)

E-Mail: nhrc3@alpha.nic.in

Sample Letter on Harassment to the NHRC

Date

The Chairperson
National Human Rights Commission
Sardar Patel Bhavan, Sansad Marg
New Delhi – 1110 001.

Subject: Apprehension of Threat to Life and Safety

Dear Sir,

An oral complaint received from Ms. Jyothi who is involved in educating the public on prevention of HIV/AIDS stating that there is a threat to her life and safety. The content of the complaint is as follows:

1. Ms. Jyothi is a volunteer and active member of The Forum for Sex Workers Rights. She is primarily part of a network for creating HIV/AIDS prevention and intervention programmes. She is particularly involved in various activities such as organising hijras and kothis and dissemination of information on HIV/AIDS. She has been pivotal in mobilising hijra and kothi sex workers in combating the spread of HIV/AIDS and the violence upon them.
2. On (Date), Jyothi, was waiting for a bus to return home. As she was waiting, the Uparpet Police arrested her and falsely charged her under Section 8 (b) of the Prevention of Immoral Trafficking in Persons Act, 1986. Jyothi has contested the arrest.
3. Since Jyothi has contested the arrest, the Begunpet Police are repeatedly targeting her. The Police are angry that she has challenged their arbitrary arrest. They have threatened her with dire consequences and vowed to falsely implicate under the NDPS Act by planting Ganja on her person.

4. Jyothi through her advocates stated the same before the Magistrate. The Magistrate then hauled up the Uparpet Police and asked them as to why they were threatening poor women and warned them not to use such threats.
5. Jyothi is now very apprehensive and fears for her life and safety. In this regard, we request you to kindly instruct the concerned police officers including the ACP, Begumpet Police Station, to ensure that the police refrain from any illegal acts and threats against Jyothi.
6. We would be much obliged if you could do the same and ensure Jyothi's safety and security from any arbitrary actions and violence by the Begumpet Police Station.

Yours Truly,

CC for kind information and necessary action:

1. Hon. Home Minister of Karnataka
2. Hon. Chair Person, Karnataka Women's Commission – Karnataka
3. Director General of Police, Nrupathunga Road, Karnataka
4. Deputy Commissioner of Police, Bangalore (your area)
5. Assistant Commissioner of Police, Begumpet , Bangalore. (your area)
6. The Commissioner of Police
7. The Inspector General of Police, Karnataka
8. The Governor of Karnataka

(Ensure that a copy of the letter goes out to all the 8 authorities mentioned above so that everybody knows that all levels of authority have been contacted.)

US Court Decisions on Transgender Rights

U.S. Supreme Court

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)

(holding that harassment directed at a person because that person does not conform to traditional sex stereotypes is covered by Title VII)

Office of Civil Rights, Revised Sexual Harassment Guidance § III (Jan. 2001)

("[G]ender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond ..." (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (holding sex-stereotyping is a form of sex discrimination prohibited by Title VII) (emphasis added))

Circuit Courts

Rosa v. Park West Bank & Trust Co., 214 F.3d 213 (1st Cir. 2000)

(reinstating Equal Credit Opportunity Act claim on behalf of biologically male plaintiff who alleged that he was denied an opportunity to apply for a loan because he was not dressed in "masculine attire")

Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 260 n.4 (1st Cir. 1999)

("[J]ust as a woman can ground an action on a claim that men discriminated against her because she did not meet stereotyped expectations of femininity, a man can ground a claim on evidence that other men discriminated against him because he did not meet stereotyped expectations of masculinity.") (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-51 (1989)).

Simonton v. Runyon, 232 F.3d 33 (2nd Cir. 2000)

(noting that discrimination based on a failure to conform to gender norms might be cognizable under Title VII)

Bibby v. Phila. Coca Cola Bottling Co., 260 F.3d 257 (3rd Cir. 2001)

(holding that a plaintiff may be able to prove a claim of sex discrimination by showing that the “harasser’s conduct was motivated by a belief that the victim did not conform to the stereotypes of his or her gender”)

Spearman v. Ford Motor Co., 231 F.3d 1080 (7th Cir. 2000)

(noting that “sex stereotyping may constitute evidence of sex discrimination”)

Doe v. Belleville, 119 F.3d 563 (7th Cir. 1997), vacated and remanded on other grounds, 523 U.S. 1001 (1998)

(holding that “Title VII does not permit an employee to be treated adversely because his or her appearance or conduct does not conform to stereotypical gender roles” and explaining that “[a] man who is harassed because his voice is soft, his physique is slight, his hair long, or because in some other respect he exhibits his masculinity in a way that does not meet his coworkers’ idea of how men are to appear and behave, is harassed ‘because of his sex’”)

Schmedding v. Tnemec Co., Inc., 187 F.3d 862 (8th Cir. 1999)

(holding that the plaintiff had stated a Title VII claim where the “harassment included rumors that falsely labeled him as homosexual in an effort to debase his masculinity”)

Nichols v. Azteca Restaurant Enterprises, 256 F.3d 864, 874-75 (9th Cir. 2001)

(holding that harassment “based upon the perception that [the plaintiff] is effeminate” is harassment because of sex, in violation of Title VII and the Washington Law Against Discrimination, and overruling *DeSantis v. Pacific Tele. & Tele. Co., Inc.*, 608 F.2d 327 (9th Cir. 1979)).

Schwenk v. Hartford, 204 F.3d 1187, 1202 (9th Cir. 2000)

(noting that Title VII prohibits “[d]iscrimination because one fails to act in the way expected of a man or woman”)

District Courts

Centola v. Potter, 2002 WL 122296, — F. Supp. 2d – (D. Mass. 2002)

(holding that Title VII prohibits harassment based on a perception that a person does “not conform with their ideas about what ‘real’ men should look or act like”)

Ianetta v. Putnam Investments, Inc., 142 F. Supp. 2d 131 (D. Mass. 2001)

(holding that discrimination based on “failing to meet the male gender stereotype” is prohibited by Title VII)

Snelling v. Fall Mountain Regional Sch. Dist., 2001 WL 276975 (D.N.H. 2001)

(holding that harassment based on “sex-based stereotypes of masculinity” is actionable under Title IX)

Bilunas v. Henderson, 2000 WL 639329 (D.N.H. 2000)

(noting that discrimination on the basis that one does not “project, or dress in a manner consistent with the stereotypical male image” is unlawful discrimination on the basis of sex)

Samborski v. West Valley Nuclear Services, Co., 1999 U.S. Dist. LEXIS 20263 (W.D.N.Y. 1999)

(holding that “evidence of sex stereotyping may provide proof that an employment decision or an abusive environment was based on gender”)

International Bill of Gender Rights

Annexure X

(As adopted June 17, 1995 in Houston, Texas, U.S.A.)

The International Bill of Gender Rights (IBGR) strives to express human and civil rights from a gender perspective. However, the ten rights enunciated below are not to be viewed as special rights applicable to a particular interest group. Nor are these rights limited in application to persons for whom gender identity and gender role issues are of paramount concern. All ten sections of the IBGR are universal rights which can be claimed and exercised by every human being.

The International Bill of Gender Rights (IBGR) was first drafted in committee and adopted by the International Conference on Transgender Law and Employment Policy (ICTLEP) at that organization's second annual meeting, held in Houston, Texas, August 26-29, 1993.

The IBGR has been reviewed and amended in committee and adopted with revisions at subsequent annual meetings of ICTLEP in 1994 and 1995.

The IBGR is a theoretical construction which has no force of law absent its adoption by legislative bodies and recognition of its principles by courts of law, administrative agencies and international bodies such as the United Nations.

However, individuals are free to adopt the truths and principles expressed in the IBGR, and to lead their lives accordingly. In this fashion, the truths expressed in the IBGR will liberate and empower humankind in ways and to an extent beyond the reach of legislators, judges, officials and diplomats.

When the truths expressed in the IBGR are embraced and given expression by humankind, the acts of legislatures and pronouncements of courts and other governing structures will necessarily follow. Thus, the paths of free expression trodden by millions of human beings, all seeking to define themselves and give meaning to their lives, will ultimately determine the course of governing bodies.

The IBGR is a transformative and revolutionary document but it is grounded in the bedrock of individual liberty and free expression. As our lives unfold these kernels of truth are here for all who would claim and exercise them.

This document, though copyrighted, may be reproduced by any means and freely distributed by anyone supporting the principles and statements contained in the International Bill of Gender Rights.

Comments, suggestions or questions regarding the IBGR should be forwarded to Sharon Stuart, IBGR Project, P.O. Box 930, Cooperstown, NY 13326 U.S.A. Telephone: (607) 547- 4118. FAX: (607) 547-2198. E-Mail: StuComOne@aol.com.

The Right To Define Gender Identity

All human beings carry within themselves an ever-unfolding idea of who they are and what they are capable of achieving. The individual's sense of self is not determined by chromosomal sex, genitalia, assigned birth sex, or initial gender role. Thus, the individual's identity and capabilities cannot be circumscribed by what society deems to be masculine or feminine behavior. It is fundamental that individuals have the right to define, and to redefine as their lives unfold, their own gender identities, without regard to chromosomal sex, genitalia, assigned birth sex, or initial gender role.

Therefore, all human beings have the right to define their own gender identity regardless of chromosomal sex, genitalia, assigned birth sex, or initial gender role; and further, no individual shall be denied Human or Civil Rights by virtue of a self- defined gender identity which is not in accord with chromosomal sex, genitalia, assigned birth sex, or initial gender role.

The Right To Free Expression Of Gender Identity

Given the right to define one's own gender identity, all human beings have the corresponding right to free expression of their self-defined gender identity.

Therefore, all human beings have the right to free expression of their self-defined gender identity; and further, no individual shall be denied Human or Civil Rights by virtue of the expression of a self-defined gender identity.

The Right To Secure And Retain Employment And To Receive Just Compensation

Given the economic structure of modern society, all human beings have a right to train for and to pursue an occupation or profession as a means of providing shelter, sustenance, and the necessities and bounty of life, for themselves and for those dependent upon them, to secure and retain employment, and to receive just compensation for their labor regardless of gender identity, chromosomal sex, genitalia, assigned birth sex, or initial gender role.

Therefore, individuals shall not be denied the right to train for and to pursue an occupation or profession, nor be denied the right to secure and retain employment, nor be denied just compensation for their labor, by virtue of their chromosomal sex, genitalia, assigned birth sex, or initial gender role, or on the basis of a self-defined gender identity or the expression thereof.

The Right Of Access To Gendered Space And Participation In Gendered Activity

Given the right to define one's own gender identity and the corresponding right to free expression of a self-defined gender identity, no individual should be denied access to a space or denied participation in an activity by virtue of a self-defined gender identity which is not in accord with chromosomal sex, genitalia, assigned birth sex, or initial gender role.

Therefore, no individual shall be denied access to a space or denied participation in an activity by virtue of a self-defined gender identity which is not in accord with chromosomal sex, genitalia, assigned birth sex, or initial gender role.

The Right To Control And Change One's Own Body

All human beings have the right to control their bodies, which includes the right to change their bodies cosmetically, chemically, or surgically, so as to express a self-defined gender identity.

Therefore, individuals shall not be denied the right to change their bodies as a means of expressing a self-defined gender identity; and further, individuals shall not be denied Human or Civil Rights on the basis that they have changed their bodies cosmetically, chemically, or surgically, or desire to do so as a means of expressing a self-defined gender identity.

The Right To Competent Medical And Professional Care

Given the individual's right to define one's own gender identity, and the right to change one's own body as a means of expressing a self-defined gender identity, no individual should be denied access to competent medical or other professional care on the basis of the individual's chromosomal sex, genitalia, assigned birth sex, or initial gender role.

Therefore, individuals shall not be denied the right to competent medical or other professional care when changing their bodies cosmetically, chemically, or surgically, on the basis of chromosomal sex, genitalia, assigned birth sex, or initial gender role.

The Right To Freedom From Psychiatric Diagnosis Or Treatment

Given the right to define one's own gender identity, individuals should not be subject to psychiatric diagnosis or treatment solely on the basis of their gender identity or role.

Therefore, individuals shall not be subject to psychiatric diagnosis or treatment as mentally disordered or diseased solely on the basis of a self-defined gender identity or the expression thereof.

The Right To Sexual Expression

Given the right to a self-defined gender identity, every consenting adult has a corresponding right to free sexual expression.

Therefore, no individual's Human or Civil Rights shall be denied on the basis of sexual orientation; and further, no individual shall be denied Human or Civil Rights for expression of a self-defined gender identity through sexual acts between consenting adults.

The Right To Form Committed, Loving Relationships And Enter Into Marital Contracts

Given that all human beings have the right to free expression of self-defined gender identities, and the right to sexual expression as a form of gender expression, all human beings have a corresponding right to form committed, loving relationships with one another, and to enter into marital contracts, regardless of

their own or their partner's chromosomal sex, genitalia, assigned birth sex, or initial gender role.

Therefore, individuals shall not be denied the right to form committed, loving relationships with one another or to enter into marital contracts by virtue of their own or their partner's chromosomal sex, genitalia, assigned birth sex, or initial gender role, or on the basis of their expression of a self-defined gender identity.

The Right To Conceive, Bear, Or Adopt Children; The Right To Nurture And Have Custody Of Children And To Exercise Parental Capacity

Given the right to form a committed, loving relationship with another, and to enter into marital contracts, together with the right to express a self-defined gender identity and the right to sexual expression, individuals have a corresponding right to conceive and bear children, to adopt children, to nurture children, to have custody of children, and to exercise parental capacity with respect to children, natural or adopted, without regard to chromosomal sex, genitalia, assigned birth sex, or initial gender role, or by virtue of a self-defined gender identity or the expression thereof.

Therefore, individuals shall not be denied the right to conceive, bear, or adopt children, nor to nurture and have custody of children, nor to exercise parental capacity with respect to children, natural or adopted, on the basis of their own, their partner's, or their children's chromosomal sex, genitalia, assigned birth sex, initial gender role, or by virtue of a self-defined gender identity or the expression thereof.

Procedures of Sex Reassignment Surgery (SRS)

Step 1: Clinical behavioral scientists gather the information of SRS applicant to differentiate between the transsexuals and other types of gender disorders. To do this, they interview about general and gender development of the applicant, the way the parents have dealt with their child's gender disorder, the family backgrounds of the parents themselves, identification figures, relationship with same sex and opposite sex parents, first conscious cross gender feelings, aspects of sexuality, and so on. Applicant must have a confirmed, working diagnosis of transsexuals and have completed at least 3 months of psychotherapy in order to obtain evaluation for hormone therapy. During this time, the MF transsexual patient can start electrolysis, if desired, to remove unwanted facial hair.

Step 2: Upon receiving a written evaluation for hormone therapy, the applicant may then take a copy of the evaluation to an endocrinologist who offers monitoring of relevant blood chemistries and routine physical examinations. This is especially important because hormone therapy may have some irreversible effects and may lead to mild or serious health-threatening complications. However, if a patient is followed by a qualified physician who explains what the patient may expect from the hormones, both positive and negative outcome, and regularly monitors the patient's lab work, he is less likely to run into complications. If MF patient has not already started electrolysis for removal of the beard, it should be started during the early stages of hormone therapy.

Step 3: The next step is a period of one to two years of cross living while the patient continues hormone therapy. The patient lives 24 hours a day in the gender of choice. Thus, this period is called "real life test". During this time, the patient must demonstrate stability and prove functional ability, become self supporting, and be socially active. Hormone therapy should be started as a partial hormone therapy. It blocks the action of sex steroids in a reversible way. The MF bodies do not masculinize any further, and FMs (female to male) stop menstruation and sometimes experience a weakening of breast tissue. On the contrary, full hormone treatment is not reversible. It masculinizes

the female body, and feminizes the male body. It is given before 18. Minimal duration of the real life test is 1 year for FMs, 1.5 years for MFs. This difference is due to the fact that the gender role change seems to have more impact on the life of MF than on that of FM, and MFs need more time to adjust to the new situation.

Step 4: At the end of a cross living, an orchidectomy (to remove the sex glands of a male) may be performed for the MF transsexuals. Implants or breast augmentation and other optional non-genital surgical sex reassignment procedures are often done at this time. Mastectomy (to remove the breast) and hysterectomy (to remove the uterus) for the FM transsexual is usually begun after one year of cross living. Most patients consult a plastic surgeon for the mastectomy and a gynecologist for the hysterectomy. It is also recommended that the FM transsexuals be in complete understanding with the surgeon who does his phalloplasty (to implant the male sex organ to female). Some FMs who have been on androgen for a while tend to get so much clitoral enlargement, that they choose not to have that phalloplasty at all.

Step 5: At this point, final psychological evaluation before surgery should be decided. Two written evaluations are required by at least two clinical behavioral scientists; at least one of which is a doctoral level clinical behavioral scientist and one of whom has known the patient in a professional relationship for at least six months, before surgical approval.

Step 6: Operating surgery.

Step 7: Post operative or follow-up care after a patient has completed SRS, for a period of at least three months is required, however, six months are recommended. This is a period of recovery, necessary for immediate psychological and social readjustment.

(Sourced from: www.umkc.edu/sites/hsw/gendid/srs.html)

Vividha Leaflet — Sexuality Minority Rights are Human Rights

Vividha is an autonomous, non-funded collective of sexuality minorities (hijras, kothis, double-deckers, lesbians, bisexuals, gays, homosexuals, transgenders and others who are oppressed due to their gender identity/sexual orientation), and their supporters. We are 10 months old. This is the first time we are coming out publicly in Bangalore, as a community.

Every year December 10th is observed as Human Rights Day all over the world. Despite the fact that human rights are guaranteed for every human being irrespective of their class, caste, religion, gender, sexuality, race, language, nationality, ethnicity or political beliefs, human rights of sexuality minorities are blatantly violated everywhere in India, forcing many of us to lead a sub-human existence.

Section 377 of the Indian Penal Code (IPC) criminalises sexual interaction between people of the same gender. This law was introduced in India in 1860 by British rulers. Although Britain repealed it a long time ago, India still continues to carry this notorious colonial legacy. This law is extensively used by police to harass, extort money, blackmail and abuse (verbally, physically and sexually) homosexual/bisexual men, double-deckers, kothis, hijras in public parks and areas. Many goondas take advantage of this situation and harass, abuse and extort money from sexuality minorities. IPC 377 is also used to separate lesbian couples.

The prevailing civil laws for marriage, adoption, inheritance, property, insurance, pension, gratuity, housing etc. deny space for sexuality minorities, as they recognise only heterosexual marriages and families as legitimate. The Indian constitution recognises only two genders: male and female. Hijras have no space in it. Non-recognition of gender (after sex change) makes it impossible for hijras to avail employment opportunities, education, housing, health facilities, property rights, marriage rights, ration cards/passports/voter identity cards etc. Most kothis face sexual harassment at workplace from male colleagues. These situations leave hijras/kothis with very few choices, and many

choose sex-work for a living. Living is hell for all sex workers (including hijras, kothis, men and women) as the Immoral Trafficking Prevention Act (ITPA) criminalises sex-work and gives enormous powers to the police to harass, abuse, rape, torture, and extort money from sex-workers.

Very often sexuality minorities face physical violence, verbal abuse, emotional blackmail, and rejection from families too. Many are thrown out of their homes and denied a share of the property. Some times sexuality minorities are forced into unhappy 'heterosexual marriages' by their families where, not only sexuality minorities, but also their spouses and children face oppression. Some families opt for unethical, unscientific, misinformed and outdated psychiatric treatments to 'cure' their children of their 'sexual orientation/gender expression' and subject them to dangerous drugs, electric shocks, and aversion therapies. These methods cause enormous harm and destroy sexuality minorities, physically and psychologically. What needs to be cured is not our 'sexual/gender expression' but society's ignorance, prejudice, bias and intolerance towards sexuality minorities. In our patriarchal society, lesbian/bisexual women are doubly oppressed as sexuality minorities and as women, having very little access to any public space. Homes become prisons for them. Families often separate lesbian couples and force lesbian/bisexual women into heterosexual marriages. More than 30 lesbian/bisexual women have committed suicide in India in the past 5 years.

Sexuality minorities face harassment, abuse, ridicule, discrimination everywhere: in the streets, at work places, schools/colleges, hospitals etc. Physical/sexual/verbal abuse, emotional and social alienation, and psychological trauma become the everyday lived realities for most of us. This society destroys our self-confidence, makes us ashamed, lonely and fills us with low-self esteem and feelings of depression. Some of us are forced to end our lives.

We are no longer silent victims of this hetero-patriarchal society. We are getting united and have started help-lines, support groups, health interventions, and groups to protect our human rights, all over India. We are also extending support to many other people and groups who are oppressed due to their class, caste, gender, religion, etc. We have learned to articulate, and fight for our rights. Our journey will not stop until we achieve justice and dignity.

We appeal to families to stop harassing sexuality minorities and demand love and acceptance. We also appeal to the media and all progressive and secular groups to support our struggles and help in fighting all hatred, be it hatred of homosexuals, bisexuals and transsexuals, or hatred based on religion, caste, race, sex and disability.

(8 Dec. 2002)



This poignant expose of human, and human rights, violations against transsexual persons and communities should be compulsory reading for Indian human rights communities. The dominant discourse on human rights in India has yet to come to terms with the production/ reproduction of absolute human rightlessness of transsexual communities. The work in your hands not merely foregrounds the microfascism of the local police state, it also archives practices of everyday resistance to it and a programme for a more inclusive formation of human rights movement in India.

- Upendra Basu